

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMIE LEIGH JONES,
PLAINTIFF,

v.

H-07-CV-2719
HOUSTON, TEXAS
JUNE 22, 2011
9:07 A.M.

HALLIBURTON COMPANY D/B/A
KBR KELLOGG BROWN & ROOT
(KBR); KELLOGG BROWN & ROOT
SERVICES, INC.;
DEFENDANTS.
.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 *(Jury not present)*

3 THE COURT: All right. I'm told you have something to
4 talk to me about.

09:07 5 MS. CATES: I do, your Honor. Plaintiffs' Exhibit 19
6 yesterday was admitted, about Jamie's -- it was an e-mail from
7 Jamie to KBR about her hard drive.

8 *(Discussion off the record)*

9 THE COURT: Start again, please.

09:08 10 MS. CATES: Okay. Plaintiffs' Exhibit 19 was admitted
11 yesterday. It's an e-mail from Jamie to KBR about her hard
12 drive. What we would like -- and we added to our exhibit list
13 last night -- is several e-mails that are the responses to
14 Jamie's request for her hard drive that shows that KBR -- as
09:08 15 Jamie testified yesterday, she said KBR hid the hard drive
16 and -- to protect the company and, actually, the Department of
17 State had it --

18 THE COURT: So, it's your response to those?

19 MS. CATES: Yes, and it's actually optional
09:08 20 completeness for the responses.

21 MR. KELLY: Your Honor, I just need to bring it to the
22 Court's attention this continues every -- it seems like every
23 night we get a new exhibit list, we get a new this or we get a
24 new that. And this is just one more example.

09:08 25 There was never a question -- our Exhibit 19,

09:08 1 which was admitted, has been in their possession since we first
2 exchanged exhibits.

3 And I don't think Ms. Jones said they hid her
4 hard drive. I think they had possession of it. These don't
09:09 5 refute that. They did have possession of it. All they say is
6 that this is their effort to send it back to Ms. Jones when
7 they get ready to do so.

8 But we keep getting new exhibits from defense.

9 THE COURT: Well, that's a recurring problem in trial;
09:09 10 and it's always hard to referee that.

11 But if what you say is true, that they really are
12 not helpful to KBR's case, then what's the harm in allowing
13 them in?

14 MR. KELLY: The harm is that it doesn't stop, your
09:09 15 Honor. It's difficult enough, as the Court knows, to prepare
16 for trial in the evenings and to continue to get ready and then
17 we keep getting new exhibit lists. I don't care about the
18 exhibits themselves so much as I care about the process of
19 continuing to get new exhibits every night.

09:09 20 THE COURT: Okay. Well, I'm going to let those
21 exhibits come in.

22 Does somebody want to respond to the issue of
23 continuing updates to exhibits? I think someone does.
24 Ms. Holcombe -- Ms. Cates. Sorry.

09:09 25 MS. CATES: This is the first update I've done. There

09:09 1 may have been a couple --

2 MS. HOLCOMBE: Your Honor, the only other one was an
3 inadvertent one that related to an e-mail awhile ago.

4 But what I was going to say was that -- was Mr.
09:10 5 Kelly -- the e-mails -- I'm responsible for some of the e-mails
6 that are sent -- some of the e-mails that are sent each night.
7 And a lot of it is not new exhibits. It's letting people know
8 that we have redacted exhibits here, we're bringing attached
9 redacted exhibits, things that are already in.

09:10 10 So, I mean, there has been a lot of communication
11 between the parties in the evenings, partly based on the
12 Judge's rulings.

13 MS. CATES: Part of the 412 issue is that new
14 redactions have to be made.

09:10 15 THE COURT: You-all pace yourself. Do deep breathing.

16 Okay. All I know to do is take these up one by
17 one. I've always said that the job of a lawyer is infinitely
18 harder than the job of the judge. And I manifestly believe
19 that. It's just very hard for me to -- as I say, to referee
09:11 20 these things when I don't know the history, I don't know the
21 importance. You-all are so much closer to the case than I am.

22 I generally think lawyers ought to do their
23 exhibit exchanges pretrial; but I don't think I've yet had a
24 trial where something didn't come up that we had to get off the
09:11 25 exhibit list, sometimes even off the witness list.

09:11 1 MR. KELLY: And, your Honor, that's really the only
2 purpose for bringing it to the Court's attention.

3 THE COURT: I understand. You've made your point. I
4 take note of it, and I'll remain sensitive to it.

09:11 5 MR. KELLY: Thank you, your Honor.

6 MR. McKINNEY: Judge, I don't mean to belabor the
7 point; but there's two additional issues I'd like to raise.

8 First of all, trials are fluid and things change
9 during trial --

09:11 10 THE COURT: I know.

11 MR. McKINNEY: -- occasioning the need for new things.

12 The second thing, in particular reference to this
13 trial, as the Court may have noticed, Ms. Jones has a -- I
14 believe, a marked tendency to inject new and completely
09:11 15 unforeseeable matters in her answers to questions --

16 THE COURT: Well, I know that --

17 MR. McKINNEY: -- and raise issues -- at least from
18 our standpoint, raise issues that we have never heard of
19 before. And sometimes it's necessary to go out and find
09:12 20 additional information, we didn't think we would need, to deal
21 with the new matters arising.

22 THE COURT: Well, I know that's been a contention of
23 your side.

24 Do you suggest you've never before claimed that
09:12 25 there was some mischief with the hard drive?

09:12 1 MR. MCKINNEY: Not a record that I'm aware of and not
2 in the fashion that she claimed it in this -- before the Court.

3 MS. CATES: Well, and the e-mails show that the
4 Department of State had it, not KBR. She did not say yesterday
09:12 5 on the stand that she received e-mails from KBR, that the
6 Department of State had the hard drive. That, I think, is why
7 we need to address it by these e-mails, is that we weren't
8 holding it from her, the Department of State was, because the
9 Department of State did the investigation.

09:12 10 THE COURT: Okay. Well, I do think it's a little bit
11 of a derivative issue. I don't think the trial will turn on
12 that. But I do understand your need for completeness. I do
13 understand that.

14 Anything else?

09:12 15 MR. KELLY: Actually, your Honor, in light of what
16 she's just said, these are hearsay. None of these are directed
17 to Jamie, at least I'm not seeing one.

18 MS. CATES: There's actually one from Ron and Jamie.

19 MR. KELLY: Okay. There's one to Jamie. All of 106
09:13 20 appears to be about Jamie, but not to her.

21 MS. CATES: Gabe Andino can prove those up when he
22 testifies.

23 MR. KELLY: Even if he can prove it up, it's still an
24 out-of-court statement offered for the truth of the matter
09:13 25 asserted, your Honor.

09:13

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MR. MCKINNEY: Business records.

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THE COURT: Well, you want to hand these to me? I'll look at them. I don't know whether they're business records or not.

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09:13

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MR. KELLY: The ones that are to or from Ms. Jones, I don't have that objection. But the ones that are not, I do, your Honor.

6

7

THE COURT: Well --

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09:13

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MS. CATES: But if they're to or from Gabe Andino, he can talk about them.

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THE COURT: Well, it doesn't matter whether something is to or from anybody, really, for purposes of the rules of hearsay, unless the author is a party opponent or unless it's a prior technical witness. The fact that it's to somebody doesn't get it around the hearsay rule. It's still an out-of-court statement. So, the argument would be that these don't qualify as business records because, I guess, it's not a business.

09:14

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Is that right?

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09:14

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MR. ESTEFAN: Well, they're --

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THE COURT: And, then, public records and reports, the Number 8 exception, it refers to, as an exception to the hearsay rule: Activities of the office or agency, matters observed pursuant to duty imposed by law.

09:14

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So, anything from KBR would be party opponent and

09:15 1 that would come in. Anything from the State Department looks
2 to me like it comes under Section 8.

3 MR. KELLY: Your Honor --

4 MS. CATES: There's actually no e-mail from the State
09:15 5 Department. These are actually all KBR e-mails.

6 THE COURT: Oh, I see. Wait a minute. It's not -- he
7 can introduce those, and you can't.

8 MR. KELLY: Right. That was my point.

9 THE COURT: I'm sorry.

09:15 10 MS. HOLCOMBE: Response, your Honor?

11 THE COURT: Yes.

12 MS. HOLCOMBE: Two things. One, first of all,
13 Mr. Andino will be here; and he, as a custodian of some of the
14 records of KBR and familiarity in his position --

09:15 15 THE COURT: Okay. So, now you're getting it in as
16 KBR's business records?

17 MS. HOLCOMBE: Yes, your Honor.

18 THE COURT: Okay. I'm sorry.

19 MS. HOLCOMBE: As well as the fact that -- for
09:15 20 purposes of using them with Ms. Jones or whenever, additionally
21 these can be shown to show under 803(3) a present sense
22 impression of their -- I'm sorry. Not present sense
23 impression -- their present state of mind, what they will be
24 doing, their plan, their intent, their preparation, their
09:15 25 knowledge. Under 803(3), that is what these e-mails are going

09:16 1 to show, is their intent to find the hard drive, their intent
2 to tell her where it is, that the DOS has it. And, therefore,
3 it would be used under that exception, as well, on top of the
4 business records.

09:16 5 MS. VORPAHL: And also, the e-mail to Jamie, talking
6 about the hard drive, goes to her knowledge of KBR's position
7 on the hard drive and her knowledge of why KBR hadn't been able
8 to get it to her yet.

9 THE COURT: So, it goes to credibility, you say?

09:16 10 MS. CATES: (Nodding head.)

11 THE COURT: Okay. Let's try it through Mr. Andino.
12 And, then, if -- I think the likeliest fit is a business record
13 but --

14 MS. CATES: So, the e-mails to Jamie, that she
09:16 15 received, can we bring that in through Ms. Jones, just for her
16 knowledge about the hard drive?

17 THE COURT: Her knowledge but not the truth? I'll
18 have to instruct them, but yeah.

19 MS. CATES: Thank you.

09:16 20 THE COURT: We're still missing one juror. Do we have
21 anything else to clear up?

22 MR. ESTEFAN: We do, your Honor.

23 THE COURT: Okay.

24 MR. ESTEFAN: I believe last Thursday as we were
09:16 25 leaving, the Court asked us to come Monday to address the issue

09:17 1 of Mr. Bortz' arrests.

2 THE COURT: Yeah. I thought we talked about that.

3 MR. ESTEFAN: I don't believe we did. You were sort
4 of reviewing the thing about Texas Civil Practice and Remedies
09:17 5 Code's special pleading and things like that in order to
6 determine whether it would be allowed in. And I do have some
7 cases for the Court on that.

8 THE COURT: Is this something we're going to take up
9 before the next break?

09:17 10 MR. ESTEFAN: We can take it up during the next break.
11 Mr. Bortz is expected to come testify tomorrow.

12 *(Discussion off the record)*

13 THE COURT: Well, does it speak to the requirement of
14 special pleadings?

09:17 15 MR. ESTEFAN: It absolutely does, Judge. And it talks
16 about the no -- no requirement for such in federal court when
17 you're talking about the defamation causes of action.

18 THE COURT: Because it's procedure, not substantive?

19 MR. ESTEFAN: Well, and it's also the Rules
09:18 20 Enabling Act and -- so, there's --

21 THE COURT: Okay. You want to make a response, or do
22 you want to wait to the next break?

23 MR. ESTEFAN: I can give them the cases they haven't
24 seen.

09:18 25 MS. CULLEN: Yeah. I was not aware that they had a

09:18 1 response to it. This is the first time I've heard of it.

2 THE COURT: Provide a set to Ms. Talla or to
3 Mrs. Loewe for Ms. Talla.

4 MS. CULLEN: Your Honor, I would point out, in
09:18 5 addition to the discussions in the response that we filed a few
6 days ago about libel-proof claims and that he certainly is not
7 one, there's also the issue of their theory, as described in
8 their brief, that they want to show Mr. Bortz has some sort of
9 psychological problem that leads him to attack women with whom
09:18 10 he is romantically engaged. They've certainly not designated
11 any witnesses on that topic, and that would certainly be expert
12 testimony.

13 There's certainly not sufficient evidence in
14 these two misdemeanor 30-day sentence kind of events that would
09:19 15 support diagnosing this man with some sort of psychological
16 disorder that predisposes him to attack women. And these were
17 obviously considered to be minor infractions by the law
18 enforcement officers who arrested him and investigated.

19 We have one deferred adjudication. We have
09:19 20 one -- he was given anger management classes in both instances,
21 and the maximum sentence was 30 days on the one in
22 South Carolina.

23 THE COURT: Well, we'll take it up next break after we
24 review these cases.

09:19 25 Is the jury entirely present? No, not yet.

09:19 1 Okay.

2 Well, we can keep talking till the jury is here.

3 MR. ESTEFAN: Our purpose for offering the evidence,
4 your Honor, is it goes directly to our ability to defend --
09:19 5 constitutionally defend Ms. Jones and the slander claim that's
6 been brought against her and it goes directly to mitigation of
7 damages. If we're not allowed to do that, as the Court has
8 astutely pointed out, he comes in and can say, "I'm a choir
9 boy"; and we can't refute that.

09:20 10 THE COURT: But -- so, on Ms. Cullen's point, are you
11 going to make it a psychological proclivity argument; or is it
12 just to show he has a criminal record?

13 MR. ESTEFAN: Your Honor, if the Court instructs us
14 not to make a proclivity argument, we will abide by the Court's
09:20 15 ruling. I think that there are enough experts in this case
16 that someone can opine about that. But if that's the Court's
17 ruling, we'll honor that.

18 THE COURT: I'm just trying to understand your
19 argument, not what I am going to rule. But is your argument
09:20 20 that he has not only a criminal record but a malevolent
21 inclination toward female violence?

22 MR. ESTEFAN: There is -- we have talked to experts
23 who have told us that. If the Court says we don't -- that's
24 not to be discussed in --

09:20 25 THE COURT: No, I'm not asking you what I should do.

09:21 1 I'm asking you what your argument is. I mean, are you going to
2 bring an expert who will to testify to that or --

3 MR. ESTEFAN: We had planned to have someone testify
4 about that but --

09:21 5 THE COURT: Who's that?

6 MR. ESTEFAN: Susan Blank, psychiatrist.

7 MS. CULLEN: That was never disclosed, never
8 disclosed.

9 MR. ESTEFAN: She has a --

09:21 10 MS. CULLEN: It's a complete surprise.

11 THE COURT: I'm sorry. One at a time.

12 MR. ESTEFAN: There's a catch-all provision that she
13 says: And any other matters relevant to this case.

14 And so, you know, with the way they've been
09:21 15 disclosing things, Judge, it's ironic to hear Mr. McKinney
16 laughing right about now. The way they've been disclosing
17 things to us as -- or, as I should say, non-disclosing things
18 to us. So, you know, I take exception to the laughter only
19 because if it's good for one side it's got to be good for both.

09:21 20 MR. McKINNEY: If that were a valid argument, then
21 every expert would simply opine: I plan to testify on matters
22 relevant to this case, period. Signed, yours very truly, the
23 expert. That's not a proper --

24 MS. CULLEN: And, your Honor, if I might point out,
09:21 25 we've not retained any experts. So, there is no issue of the

09:22 1 Bortz team failing to disclose anything about expert testimony
2 to these gentlemen.

3 And if I might respond to the substantive issues.
4 Number one, their defense to our claim of defamation is to
09:22 5 prove that what Ms. Jones said about Mr. Bortz is true.

6 THE COURT: Say it one more time. What Ms. --

7 MS. CULLEN: That what she said is true, that is their
8 defense.

9 MR. ESTEFAN: That is a defense.

09:22 10 MS. CULLEN: Secondly, in terms of the damages issue
11 that he is somehow on the Internet and everybody knows about it
12 and it has ruined his reputation, it is Ms. Jones' friend,
13 Ms. Sparky, who is the one who made this readily available on
14 the Internet. If you just Google Charles Bortz, if she had not
09:22 15 put all of this on her website, it would not pop up. This is a
16 state website that's obscure. You have to know to go look for
17 it. You have to know what state to go look for it in.

18 The only reason it now pops up if you Google his
19 name is because they got it put on these blogs and websites of
09:23 20 people that are interested in her situation.

21 THE COURT: So, your argument is that without that, it
22 wouldn't have been known generally and without that, his
23 reputation wouldn't have suffered?

24 MS. CULLEN: Yes, your Honor.

09:23 25 MR. ESTEFAN: That is an untrue assertion, your Honor.

09:23 1 Ms. Cullen makes the assertion as though it's a fact, as though
2 it's been established. I think at a minimum we ought to be
3 allowed to go into, with witnesses if need be, but where this
4 information is available.

09:23 5 I mean, you know, she's saying it as though one
6 witness goes out and finds this impossibly hard-to-find thing
7 on the Internet and then makes it -- publishes it out there for
8 Jamie's benefit. You know, that's -- there were other people
9 who have found this same thing without --

09:23 10 THE COURT: Through the state, not through the posting
11 by --

12 MR. ESTEFAN: That's exactly right.

13 MS. CULLEN: And coincidentally, went and found it and
14 put it on her website and got it all over the Internet after
09:23 15 Mr. Bortz was honest in his deposition and told the truth about
16 his background.

17 And on the, what I consider, red herring
18 non-substantive issue, I would appreciate it if Mr. Estefan
19 would say what it is he believes we have not disclosed to him
09:24 20 that we had a duty to disclose. I'm not aware of anything.

21 MR. ESTEFAN: The list is --

22 MS. CULLEN: Me.

23 MR. ESTEFAN: In any event, your Honor, this Court is
24 well aware of the many fights we've had about what they've
09:24 25 disclosed and what they have not.

09:24 1 THE COURT: But that is -- I'm sorry. But that is
2 absolutely representative of every trial I've ever conducted.
3 I mean, it's -- things look relevant early in the case that
4 become irrelevant, things look irrelevant that become relevant.
09:24 5 It's -- if any lawyer or judge had a -- had an answer for that,
6 he or she would be a hero in our profession. That happens.

7 And I don't like drawing adverse inferences about
8 the character of any lawyer because something was late
9 disclosed or something. I mean, these things do happen; and it
09:24 10 is a very hard call as to issues of fairness and issues of
11 advance notice. But I'm going to continue to think very highly
12 of the lawyers who are before me.

13 MR. MCKINNEY: And we're not meaning to cast
14 aspersions, Judge; but the fact that a retained expert as this
09:25 15 Dr. Wood -- is that what her name is?

16 MS. CULLEN: Blank.

17 MR. MCKINNEY: Dr. Blank is a retained expert hired
18 solely for the purposes of testifying in this case. She did
19 not opine in her report, nor in her deposition, of any
09:25 20 psychological proclivity. For her to be allowed to offer this
21 testimony in front of the jury for the first time when we have
22 not had a chance to, A, cross-examine her and test the basis,
23 do a Daubert challenge, et cetera, and, B, retain our own
24 rebuttal witness is incredibly unfair and runs directly
09:25 25 contrary to the spirit and the letter of the rules of

09:25 1 discovery, particularly pertaining to experts where you
2 disclose their material opinions and a reasonable description
3 of the basis for the opinion.

4 We don't have any of that disclosed in any way,
09:26 5 shape, or form. And I'm not saying anybody is out of bounds
6 for having done that. I'm simply saying that failing to have
7 done so, the evidence does not come in for the first time in
8 front of a jury, subject only then for the first time
9 for cross -- cross-examination.

09:26 10 THE COURT: I am troubled about the expert witness
11 point. That is a big issue to say someone's got a
12 psychological defect that leads to violence against women. I
13 mean, that is really huge. That -- has Dr. Blank ever
14 interviewed Mr. Bortz?

09:26 15 MR. ESTEFAN: No, she has not, your Honor. She's
16 talking about her experience as a psychiatrist.

17 THE COURT: I don't think very many psychiatrists
18 would offer an opinion like that without even talking to the
19 subject of the opinion.

09:26 20 MR. ESTEFAN: I think the literature supports it, your
21 Honor.

22 MS. CULLEN: Your Honor, I took Dr. Blank's deposition
23 and I did ask her quite clearly -- and I'll find it in the
24 deposition if I need to -- that she tell me every opinion she
09:27 25 anticipated expressing at trial, what she had been asked to

09:27 1 opine about. She never said a word about Charles Bortz, not a
2 word. All of her opinions, everything she had been asked to
3 look at involved Ms. Jones and her PTSD.

4 And so far as I know, they never asked for, nor
09:27 5 have we ever produced any medical or psychiatric or any other
6 sort of record about Mr. Bortz. So, I can only assume her
7 basis for the opinion is what they downloaded off the Internet,
8 which is wrong. I mean, the information on it is wrong. It
9 says felony battery, which is wrong.

09:27 10 THE COURT: If Dr. Blank never sat down for a
11 face-to-face with Mr. Bortz, I think under Daubert that doesn't
12 come in. That's -- I just do not believe a competent
13 professional would offer a diagnosis that damning without ever
14 talking to the subject of the diagnosis. So, I'm not going to
09:28 15 be able to allow that. Now, whether the criminal history comes
16 in, I'll take another look at the cases.

17 MR. ESTEFAN: And, your Honor --

18 THE COURT: And we have been concerned about whether
19 this requirement of special pleading does involve -- does
09:28 20 represent substance or procedure and, therefore, whether, under
21 *Erie*, we are bound by that.

22 MR. ESTEFAN: The cases address that, your Honor.

23 THE COURT: I appreciate that. I appreciate that.

24 Okay. The jury is here. May we proceed now?
09:28 25 We'll return to this before the -- I mean, during the next

09:28 1 break.

2 (Jury present)

3 THE COURT: Thank you, ladies and gentlemen. Please
4 be seated.

09:30 5 I know coming to court today was even a more
6 formidable challenge than it normally is with today's rains;
7 but I do thank you for rejoining us and we'll try to be, as
8 always, as efficient as possible with your time. All right.

9 MR. ESTEFAN: And, your Honor, in case the jury was
09:30 10 waiting to hear cross-examination of Ms. Jones, if you could
11 explain we're taking a witness out of order only because
12 she's --

13 THE COURT: Yes.

14 One of the hard, practical aspects of any trial
09:30 15 is coordinating when witnesses appear because many of them are
16 coming from out of town, they have other obligations, they have
17 family obligations. So, typically, judges and opposing counsel
18 are pretty lenient about allowing a witness to go on out of
19 turn; that is, even though the plaintiff still has not finished
09:31 20 her case, we'll take a defendant witness just to accommodate a
21 scheduling need. Does everybody understand what I am saying?

22 Okay.

23 MR. HEDGES: It's not our witness.

24 MS. VORPAHL: Yeah. For clarity, the reason they're
09:31 25 taking this witness out of order is because this was when she

09:31 1 could come. It's their witness.

2 THE COURT: That's fine. It doesn't matter. It's out
3 of order in one party's case or it's out of order from the
4 other party's case, it doesn't matter. Just don't dock anybody
09:31 5 for the fact that a witness is coming on at a seemingly
6 untoward time.

7 Okay. Next witness, please.

8 MR. ESTEFAN: Thank you, your Honor. Plaintiff calls
9 Dr. Terri Scott to the stand.

09:31 10 THE COURT: Okay. Dr. Scott, if you would make your
11 way up here. And before you take your seat, Mrs. Loewe will
12 administer the oath.

13 MS. LOEWE: Do you solemnly swear the testimony you're
14 about to give in the matter now before the Court will be the
09:31 15 truth, the whole truth, and nothing but the truth?

16 THE WITNESS: Yes.

17 THE COURT: Okay. You may inquire.

18 MR. ESTEFAN: Thank you, your Honor.

19 **TERRI SCOTT, DULY SWORN, TESTIFIED:**

20 **DIRECT EXAMINATION**

21 BY MR. ESTEFAN:

22 Q. Good morning.

23 A. Good morning.

24 Q. Would you state your name, please?

09:32 25 A. Yes. It's Terri Scott.

09:32 1 Q. And what is your profession?

2 A. I am an obstetrician and gynecologist.

3 Q. Okay. Dr. Scott, can you tell us, please, about your
4 education?

09:32 5 A. Yes. I did my undergraduate at Texas A & M University. I
6 did my medical school at University of Texas Health Science
7 Center and then I trained at Scott & White Hospital in Temple,
8 Texas and that's where I did my residency.

9 Q. Where do you currently practice?

09:32 10 A. I currently practice in The Woodlands, and I'm in private
11 practice.

12 Q. Can you tell us a little about your experience, please?

13 A. Yes. I've been in private practice for approximately
14 11 years. I finished my residency training in 2000. I was in
09:33 15 private practice in Dallas for three years; and I've been in
16 The Woodlands, Conroe area for about almost eight years.

17 Q. Are you Board certified?

18 A. Yes.

19 Q. What does that mean?

09:33 20 A. OB-GYN is certified by the American Board of Obstetrics and
21 Gynecology. It takes -- once you finish your residency
22 training, it takes two years to become Board certified. It
23 involves doing a written exam at the completion of your
24 residency. And then two years after you're in practice, you do
09:33 25 an oral exam; and then you become Board certified.

09:33 1 Q. Doctor, I may be asking you some questions today that call
2 for you to give an opinion. If I do that, will you please give
3 any opinions in terms of reasonable medical probability?
4 A. Yes.

09:33 5 Q. Do you know what that means?
6 A. Yes.
7 Q. More likely than not?
8 A. Right.

9 Q. Okay. How do you know Jamie Leigh Jones?
09:33 10 A. She was a patient of mine from approximately November 2003
11 to the spring of 2006.
12 Q. Have you reviewed her chart recently?
13 A. Yes.

14 Q. Do you have it there with you?
09:34 15 A. Yes.

16 Q. Was Jamie taking medication while she was your patient?
17 A. Yes.

18 Q. What medications was Jamie taking and what dosages?
19 A. Most of the time I was taking care of her, she was on an
09:34 20 oral contraceptive or a birth control pill that she was taking
21 continuously. At the beginning of when I took care of her, she
22 was also taking Zoloft and Lamictal for the treatment of
23 depression.

24 Do you want me to continue on other medicines
09:34 25 later on started?

09:34 1 Q. Well, I want to stop you for just a moment and ask you
2 about the birth control pills. Why was she taking the birth
3 control pills?

09:34 4 A. When she first became my patient, it was my understanding
5 that she had been diagnosed with endometriosis, which is a
6 condition that causes painful cycles, chronic pelvic pain, that
7 she was diagnosed when she was 13, and she was started on birth
8 control pills to control the heavy cramping with her cycles.

09:35 9 Q. Thank you, Doctor. Do you have a list of the dosages that
10 go with the medications that you've been telling us about or --

11 A. I remember because I've been reviewing her chart.
12 Initially she was on Zoloft, 25 milligrams. She was on Ovcon,
13 which is a birth control pill, which is a 35-microgram estrogen
14 pill. And she was on Lamictal, 100 milligrams twice a day.

09:35 15 That was from her initial visit.

16 Q. Are those dosages high, medium, low? What -- can you give
17 us a --

18 A. Zoloft, the starting dosage is usually 50 milligrams. So,
19 that was a low dose of Zoloft. Lamictal, 100 milligrams twice
09:35 20 a day is probably kind of a medium dose.

21 Q. If you could, please, Doctor, look at your records for
22 December 22nd, 2004.

23 A. Okay.

24 Q. And on that date, why is Jamie in your office?

09:36 25 A. She initially presented -- she was seen by my physician

09:36 1 assistant, Laura Sheffer; but she presented because she stated
2 she had been sexually assaulted at work and she presented for
3 an evaluation.

4 Q. And what condition is she diagnosed with?

09:36 5 A. Laura Sheffer, my PA, physician assistant, diagnosed her
6 with sexual trauma.

7 Q. Is Jamie diagnosed ultimately with anything else?

8 A. Subsequently she presents about a month later with a
9 clinical presentation of herpes, genital warts.

09:36 10 Q. Can you tell us a little bit, Doctor, about herpes? Is the
11 first outbreak generally the worst?

12 A. Yes, typically. Herpes is -- genital herpes, there's two
13 different types, Type 1 and Type 2. So, genital herpes is
14 usually caused by Herpes Type 2. It -- most people who
09:37 15 actually get the virus may actually not even know that they
16 acquired it, but some people have a significant primary
17 outbreak that's fairly significant in the fact they have
18 multiple ulcers or lesions around the vulva area.

19 They usually also present with fever and
09:37 20 myalgias, which are just aches and pains. And it tends to be
21 more severe than subsequent outbreaks.

22 Q. And this may sound like an obvious question, Doctor. But
23 you've called it an STD. That obviously stands for "sexually
24 transmitted disease"?

09:37 25 A. Right.

09:37

1 Q. Thank you. How severe was Jamie's outbreak?

2 A. It was relatively severe, the fact that when she presented
3 in January, she was seen three times in my office by my
4 physician assistant over three days and then actually admitted
5 for IV antiviral therapy to help improve her condition.

09:38

6 Q. And you referenced the January visit. Was that when your
7 physician's assistant saw her?

8 A. Yes, sir.

9 Q. Okay. What medications is she taking at that time -- or
10 did you prescribe for her?

09:38

11 A. At that visit she was on Valtrex, Toradol, and Ambien. She
12 had actually been started on Valtrex from being seen at the
13 emergency room, I think, several days prior.

14 Q. Is that for -- Valtrex is for the treatment --

09:38

15 A. The treatment of the herpes virus.

16 Q. How long does one who has herpes have it?

17 A. Unfortunately, that type of virus is a lifelong thing that
18 you have. It kind of lays dormant in the dorsal root ganglia
19 and can reactivate throughout your life. You can't,
20 unfortunately, completely get rid of it.

09:38

21 Q. You've, I take it, seen other patients come to your office
22 with herpes?

23 A. Yes.

24 Q. When did Jamie come to your office next, please?

09:39

25 A. She came initially on January 24th, came on January 25th,

09:39 1 and then she came on January 29th and that's the day she was
2 admitted to the hospital.

3 Q. And do you see there what her -- what significant
4 complaints she had?

09:39 5 A. She was complaining of pain, lesions with discomfort.

6 Q. Was that the one-day follow-up after being discharged from
7 the hospital, or was that before she went in?

8 A. January 26 was the day she was admitted to the hospital. I
9 think she was in the hospital approximately three days.

09:39 10 Q. Let's move now to February, Doctor, if we may. Did Jamie
11 call your office on February 24th?

12 A. Yes. I have a different area that I keep notes.

13 Q. Take your time.

14 A. Okay. Actually, I may -- what note are you referring to?

09:40 15 Q. I believe it was February 24th, 2005.

16 A. Okay. I have that note.

17 Q. Why did Jamie call your office?

18 A. The chief reason, it looks like, is for test results.

19 Q. Did she call you about a letter that -- do I have my dates
09:40 20 wrong on that? I believe --

21 A. I think that's in a subsequent note.

22 Q. Okay.

23 A. That's -- yeah, I'm sorry. I was on the wrong date. I was
24 on the 21st.

09:41 25 Yes, it says she needs a letter stating that she

09:41 1 had herpes as a result of a rape, needs it sent to the
2 Air Force.

3 Q. Okay. Let's talk about that message for a minute. Who
4 wrote down the message?

09:41 5 A. That was probably taken by one of our receptionists?

6 Q. Do you know if the words in that message are Jamie's words?

7 A. I don't know if that's exactly what she said or if that's
8 the interpretation by the receptionist.

9 Q. Do medical professionals and their staff frequently use
09:41 10 shorthand notes?

11 A. Yes.

12 Q. Does your -- is it common in your record and in your notes
13 for both you and your staff to shortcut the notes with
14 abbreviations and other shortcuts?

09:41 15 A. Yes. There's definitely abbreviations in medical records.

16 Q. Was Jamie diagnosed with another sexually transmitted
17 disease, Doctor?

18 A. In the spring of 2005?

19 Q. Sometime around there.

09:42 20 A. She came in later that year for HPV or condyloma in the
21 vulvar area.

22 Q. Okay. And I think by now we probably do know what HPV is;
23 but can you tell us what that is, please?

24 A. Yes. HPV stands for Human Papilloma Virus. There's
09:42 25 actually many different strains. There's probably about

09:42 1 40 different types that cause problems with women and men. So,
2 HPV can cause genital warts and also cervical dysplasia,
3 cervical cancer, vulvar dysplasia, vulvar cancer. The genital
4 warts is usually caused by HPV-6 and 11, and those are just
09:42 5 strains of HPV.

6 Q. And you said another word in there. It was "condyloma."

7 A. Right.

8 Q. What does that mean in everyday terms?

9 A. "Condyloma" just refers to the actual specific lesion on
09:42 10 the vulva, which is typically kind of a warty appearance lesion
11 that's caused by the HPV virus.

12 Q. Looks like a wart?

13 A. Yes.

14 Q. Did you treat Jamie's condyloma?

09:43 15 A. Yes.

16 Q. What is the cause of HPV? Is it --

17 A. It's a sexually transmitted virus.

18 Q. So, when you're treating Jamie's condyloma, her genital
19 warts, when did you do that?

09:43 20 A. She initially had TCA, which is a topical therapy for
21 genital warts, applied to the area. And then she started on a
22 cream that patients apply at home called Aldara. But when she
23 started that treatment, it flared her herpes. And so,
24 ultimately she had laser treatment of the vulvar condyloma.

09:43 25 Q. Okay. I want to get -- you're using terms and we know the

09:43 1 general area, but we may want to use a diagram at some point to
2 look at the specific area. Maybe you could point that out to
3 us later.

4 What is the treatment?

09:44 5 The TCA, I believe, is some sort of acid that you
6 put on the skin?

7 A. Yeah.

8 Q. And the laser surgery, what does that do to skin?

9 A. Well, essentially TCA is the Trichloroacetic acid and
09:44 10 trying to just destroy the superficial layers of the cells to
11 destroy the condyloma.

12 And then laser is actually using, you know,
13 amplified light that essentially basically cauterizes or, you
14 know, superficially burns the superficial layers of the cell to
09:44 15 destroy those cells that are infected with the HPV and also
16 destroy the condyloma.

17 Q. And so, the laser treatment and the acid treatment, how
18 long does that take to recover from typically?

19 A. The laser therapy usually takes about two to four weeks for
09:44 20 the skin to heal.

21 Q. Okay. Now, when you say "heal," what does that mean?

22 A. Most of the time I do post-op checks at four weeks; and the
23 vulvar skin is completely healed. It's completely back to
24 normal.

09:45 25 Q. Okay. Is the skin more -- after it's healed, is it more --

09:45 1 I don't know a better word -- brittle? Maybe you have a better
2 medical word for -- is it more easily damaged after it's healed
3 than it would have been before it was surgerized [sic]?

09:45 4 A. The skin of the vulvar area is actually highly vascular,
5 and it tends to heal very well. So, most of the time after
6 laser therapy, at four weeks it's pretty much back to its
7 normal state and is not necessarily more brittle.

09:45 8 Q. So, can you tell us from your records when Jamie had the
9 surgery for the -- the laser surgery for the genital warts,
10 Doctor?

11 A. Yes. She -- it looks like she was diagnosed in May of 2005
12 with genital warts; and then she had surgery on May 25th, 2005.

13 Q. Tell us about the laser procedure. Is that done in a
14 hospital?

09:46 15 A. Yes, it's done in an outpatient surgery setting. Typically
16 patients do have to go under general anesthesia. The surgery
17 usually takes anywhere from 20 to 30 minutes. They usually are
18 watched probably an hour to two hours, and then they go home
19 the same day.

09:46 20 Q. So, it's an outpatient procedure?

21 A. Yes.

22 Q. What are the aftereffects of the surgery?

09:46 23 A. Typically it's like any other type of, you know, burn of
24 the skin. People have tenderness, a little bit of discomfort
25 for generally a couple of weeks.

09:46 1 Q. And you said complete healing, two to four weeks typically?
2 A. Yes.
3 Q. Did you see Jamie again on July 20th, 2005?
4 A. Yes.
09:47 5 Q. And why did you see her on that date?
6 A. She initially complained of pain with urination, and she
7 was diagnosed with a urinary tract infection.
8 Q. When you see her on that date, what is the status of her
9 genital warts?
09:47 10 A. What I wrote in my notes is kind of -- external female
11 genitalia within normal limits, slight erythema, and then that
12 her condyloma were resolved.
13 Q. Okay. Does "resolved" mean healed?
14 A. Yes, gone away.
09:47 15 Q. Did you note any fissures, either vaginally or anally or --
16 A. No.
17 Q. -- or lacerations?
18 A. No.
19 Q. Are "fissures" and "lacerations" used interchangeably?
09:48 20 A. Typically, yes.
21 Q. When is the next time you see Jamie in your office?
22 A. That was August the 2nd, 2005.
23 Q. And what does Jamie tell you about why she's there now?
24 A. Her initial complaint was she was there for the evaluation
09:48 25 of a sexual assault that occurred in Iraq.

09:48 1 Q. What did you do?

2 A. I initially took her history and did a physical exam. I

3 did cultures of the cervix for chlamydia and gonorrhea. I also

4 did bloodwork at that time, screening for HIV, hepatitis,

09:48 5 syphilis.

6 Q. What were your findings?

7 A. On physical exam?

8 Q. Yes, ma'am.

9 A. She had slight erythema surrounding the vaginal opening.

09:48 10 She had edema, and she had a small abrasion kind of on the

11 right side. And everything else was pretty much normal.

12 Q. How long was it between the assault of which Jamie told you

13 and your examination?

14 A. It was about five days later.

09:49 15 Q. Did you see on that examination any injury to Jamie's

16 chest?

17 A. I did not examine her chest that day.

18 Q. Did you note any other symptoms that were not physical?

19 A. Can you be more specific?

09:49 20 Q. Yes, ma'am. Anything with Jamie's demeanor?

21 A. No.

22 Q. Was she having any psychological -- and I know you're not a

23 psychiatrist or a psychologist, but anything noteworthy in your

24 records?

09:49 25 A. I mean, she appeared calm when I examined her.

09:49 1 Q. Was she hypervigilant?

2 A. Not that I observed at that time.

3 Q. What were your recommendations -- some might call them

4 prescriptions, I suppose -- for Jamie after that office visit?

09:50 5 A. My recommendations were that she initiate counseling with a

6 psychologist and -- since I'm not really able to do counseling

7 after a sexual assault. And also I gave her information just

8 about, you know, looking for signs of post-traumatic stress

9 disorder. And that typically is treated with SSRIs, which is a

09:50 10 certain type of medicine.

11 Q. Okay. Did you prescribe her any SSRIs?

12 A. Not at that time.

13 Q. And again, we're back into the alphabet soup. I'm sorry,

14 Doctor. We probably know by now that SSRI -- what they are,

09:50 15 but can you tell us what "SSRI" stands for?

16 A. Yes. It stands for "selective serotonin reuptake

17 inhibitors."

18 Q. And if you're talking to me and I don't understand that,

19 what is that? What does that mean?

09:50 20 A. Essentially that medication works in the brain at the level

21 of the neurotransmitters to induce serotonin levels. It's used

22 quite a bit for the treatment of anxiety and depression and

23 also post-traumatic stress disorder that tends to have a

24 significant anxiety component.

09:51 25 Q. Okay. I want to talk about a letter that you wrote in

09:51 1 September of 2005 to Ms. Lynn Falanga.

2 MR. ESTEFAN: I need the screen. I'm sorry.

3 Thank you, Stephanie.

4 BY MR. ESTEFAN:

09:51 5 Q. It's Joint Exhibit 93. And have you seen this letter
6 before? You probably have to turn that screen around right
7 there, Doctor.

8 MR. ESTEFAN: May I approach the witness, your Honor?

9 THE COURT: She can do that.

09:51 10 BY MR. ESTEFAN:

11 Q. Can you see the letter?

12 A. Yes.

13 Q. Is this a letter that you wrote?

14 A. Yes.

09:51 15 Q. I note on the fourth line down it says: On exam --

16 A. Right.

17 Q. -- she had a small, superficial laceration at the vaginal
18 opening?

19 A. Right.

09:52 20 Q. Is that, in fact, accurate, Doctor?

21 A. Yes.

22 Q. Okay. Well, the trouble is that I don't -- I couldn't find
23 that in your records.

24 A. Correct.

09:52 25 Q. Why is that?

09:52 1 A. I've been thinking why there's a discrepancy between my
2 exam and what I wrote on her visit on August 2nd, this letter
3 that I wrote several months later. The only thing I can think
4 about is that, you know, a lot of times I'm doing deliveries
09:52 5 and people have lacerations that I typically repair and so, I
6 think Jamie had an abrasion on her right side; but I didn't
7 write "lacerations" because it was typically fairly small.

8 Q. I'll try to paraphrase what you said. Maybe I'll get it
9 wrong. Did you say lacerations, to you --

09:53 10 A. What I recollect is she had a small abrasion on the right
11 side.

12 Q. Okay.

13 THE COURT: Doctor, I have a couple of questions.

14 THE WITNESS: Sure.

09:53 15 THE COURT: When you say labwork was also negative for
16 HIV, hepatitis, and syphilis, what you mean was it was not
17 currently acute. Is that what you mean? You don't mean she
18 didn't have genital warts, do you?

19 THE WITNESS: No. I'm sorry. In blood work, we
09:53 20 tested for HIV --

21 THE COURT: HIV. I'm sorry.

22 THE WITNESS: Yeah.

23 THE COURT: I'm confused. I apologize.

24 THE WITNESS: Yeah, the AIDS virus.

09:53 25 THE COURT: Okay. So -- but you didn't test for

09:53 1 anything else, just those?

2 THE WITNESS: I tested for chlamydia and gonorrhea. I
3 tested for HIV, hepatitis, syphilis, Hepatitis B, and
4 Hepatitis C.

09:54 5 THE COURT: My mistake. I'm sorry.

6 MR. ESTEFAN: Thank you, your Honor. May I --

7 THE COURT: You may proceed, yes.

8 BY MR. ESTEFAN:

9 Q. Before I forget, I would like to go back and talk about
09:54 10 with you, Doctor, the area that you were doing surgery in
11 for -- both with the acid treatment and the laser surgery.

12 MR. ESTEFAN: I don't know what's the exhibit number
13 on this one anymore. Gosh. We've seen this one a bunch. Do
14 you guys know what exhibit this is?

09:54 15 MR. MCKINNEY: I think it comes from Dr. Schulz'
16 records.

17 MR. ESTEFAN: This is a joint exhibit. I wanted to
18 give you the number. I'm sorry.

19 May I use the easel, your Honor?

09:54 20 THE COURT: You may.

21 BY MR. ESTEFAN:

22 Q. Doctor, I know, because of the angle between the jury and
23 you, this may be a little hard. But you can feel free to get
24 up.

09:55 25 If you could show us in what area you did the

09:55 1 surgery for Jamie -- this is pre-Iraq, before she deploys. So,
2 where is that, if you can point to it?

3 A. Yes, sure.

4 MR. MCKINNEY: May I come around to observe, please?

09:55 5 THE COURT: You may.

6 MR. MCKINNEY: Oh, it's on the monitor.

7 BY MR. ESTEFAN:

8 Q. Go ahead whenever you're ready, Doctor.

9 A. Essentially most of Jamie's condyloma was located at the
09:55 10 posterior fourchette, which is where the --

11 THE COURT: I tell you what. Let's switch her mic,
12 just put it a little bit closer to her somehow --

13 MR. ESTEFAN: I'll hold it for her, Judge, or I can
14 hold that one, your Honor.

09:55 15 THE COURT: -- the handheld one.

16 MR. ESTEFAN: I'll hold it for her, your Honor.

17 THE COURT: The acoustics in here are very tricky.

18 MR. ESTEFAN: Would you like the microphone, Doctor?

19 THE WITNESS: Yes.

09:55 20 BY MR. ESTEFAN:

21 Q. Sorry to make you hold that.

22 A. Okay. Most of Jamie's condyloma was located at the
23 posterior fourchette, which is where the labia minora come to
24 this point right here. So, that specifically is the posterior
09:55 25 fourchette. Her condyloma extended down the perineum. So,

09:56 1 this between the vagina and the rectum is called the perineum.
2 Sorry you had to have an anatomy lesson.

3 So, her condyloma was located pretty much right
4 in this area right here. About halfway down from the vagina to
09:56 5 the rectum is where her condyloma was located.

6 Q. Okay. Is that, Doctor, where the marks are on this diagram
7 in the same spot?

8 A. It looks like the ER physician here is describing fissures
9 at the posterior fourchette and perineal body, so that these
09:56 10 lines here are fissures or tears. I think there's also one
11 here and then also around the rectum.

12 Q. Thank you. I don't know if you'll need that again but --

13 That is a diagram that was created by Dr. Schulz
14 in her medical records. Have you seen that before?

09:57 15 A. Yes.

16 Q. On that diagram, Doctor, there are findings, are there not?

17 A. Yes.

18 Q. How can you tell -- as an obstetrician-gynecologist, how
19 can you -- what are the signs of one who has been sexually
09:57 20 assaulted?

21 A. You are essentially looking for signs of trauma. So, you
22 typically look for, you know, redness, swelling, tears,
23 lacerations, bruising. Those are the most common things.

24 Q. And I know that you examined Jamie five days later.

09:57 25 A. Right.

09:57 1 Q. But Dr. Schulz -- you know that Dr. Schulz examined her
2 immediately -- the next morning?

3 A. Right, yes.

4 Q. And in Dr. Schultz' records --

09:57 5 MR. ESTEFAN: Bill, do you have that one?

6 Sorry. Thank you, Stephanie.

7 Okay. Maybe we can go back to the Elmo, and I'll
8 do it this way.

9 BY MR. ESTEFAN:

09:58 10 Q. Doctor, can you see that record that -- actually, it's a
11 summary of -- of findings in the medical records. Do you see
12 that?

13 A. Yes.

14 Q. Were all these things what you've just mentioned after
09:58 15 reviewing Dr. Schulz' --

16 MS. VORPAHL: Your Honor, this is demonstrative
17 evidence that we have not seen. May we approach?

18 THE COURT: Take it off the screen, please. Okay.

19 *(At sidebar with all counsel)*

09:59 20 MR. ESTEFAN: That was -- I should have shown it to
21 them first, your Honor. This is a summary of what she just
22 testified to and where it comes from, the source of it. She
23 said she reviewed Dr. Schulz' records, and some of this she
24 found on her own. That's in her own records.

09:59 25 MS. VORPAHL: She has not designated as an expert

09:59 1 here. She's a treating physician. They've never disclosed her
2 as an expert.

3 MR. ESTEFAN: This isn't opinion testimony. It's just
4 what the --

09:59 5 MS. VORPAHL: We didn't give her Dr. Schulz' records.
6 They're now trying to get in the back door something that they
7 never disclosed to us, and she's going to sit up here and tell
8 us that she reviewed another doctor's records and opine on
9 those records when she hasn't been designated.

09:59 10 THE COURT: Yeah. I can't allow it. I'm sorry.

11 MR. ESTEFAN: Okay.

12 *(In open court)*

13 THE COURT: You may inquire.

14 MR. ESTEFAN: Thank you, your Honor.

10:00 15 BY MR. ESTEFAN:

16 Q. Did Jamie come to see you later in the year 2005?

17 A. Yes.

18 Q. I believe it was around December?

19 A. I have a note later that year, but I can't read the date.

10:00 20 Q. Can you tell us why she's there, in your office?

21 A. She had recurrence of her condyloma or genital warts.

22 Q. Were these the same genital warts that she had before you
23 did the laser surgery?

24 A. After laser therapy, there's a risk of the genital warts
10:01 25 coming back. So, it's a recurrence.

10:01 1 Q. Okay. Was this a recurrence of those same genital warts?

2 A. Yes.

3 Q. Okay. Were these tested?

4 A. No.

10:01 5 Q. Is there a -- you said earlier something about different
6 strands of genital warts, some -- you used some numbers after
7 them, 6 and 11?

8 A. Right.

9 Q. What were the higher numbers for?

10:01 10 A. Well, typically genital warts are caused by Strain 6 and
11 11. And then there's different HPV strains that can infect the
12 cervix and cause abnormalities of the cervix, and those are
13 usually -- high-risk types are typically 16 and 18.

14 Q. Okay. Did Jamie have, upon this second visit later to you
10:02 15 for genital warts or recurrence, the higher strain?

16 A. More than likely it was just a recurrence of Strain 6 and
17 11.

18 Q. Okay. Have you examined other victims of sexual assault,
19 Doctor?

10:02 20 A. I've examined some, yes, in an outpatient setting.

21 Q. Do you know what the statistics are on reporting rape?

22 MS. VORPAHL: Your Honor, I object to this line of
23 testimony. It was covered by the motion in limine.

24 THE COURT: Yeah. I'm sorry, we're not able to get
10:02 25 into that. So, please ask another question.

10:02

1 BY MR. ESTEFAN:

2 Q. What is -- you used the word in your record, Doctor,
3 "erythema." What is erythema?

4 A. "Erythema" refers to redness.

10:02

5 Q. Did Jamie have that when you examined her?

6 A. Yes.

7 Q. What is the significance of vaginal fissures?

8 A. That just refers to tears or lacerations.

9 Q. Is that a significant finding?

10:03

10 A. Yes.

11 Q. What is the significance of anal fissures?

12 A. That just typically refers to tears or lacerations around
13 the rectum.

14 Q. So, you said that Jamie had erythema, redness, and also

10:03

15 swelling when you examined her five days after she was
16 assaulted. How long would these things, swelling and redness,
17 be present after normal sexual intercourse?

18 A. Well, probably most of the time after normal sexual
19 intercourse, there's not erythema redness. If there's more
20 traumatic intercourse, then typically a few days.

10:03

21 Q. Does normal consensual intercourse typically cause swelling
22 or redness?

23 A. No.

24 Q. All right. Had Jamie had any Pap spears done after she got
25 back from Iraq?

10:04

1 A. She had one Pap smear done in April of 2006.

2 Q. Okay. Was she diagnosed with anything significant in that
3 Pap smear?

4 A. That Pap smear came back showing atypical cells of
5 undetermined significance and then when we see that, we test
6 for the HPV virus and she screened positive for the HPV virus,
7 a high-risk type.

8 Q. So I understand, atypical cells were found in '06?

9 A. Right.

10 Q. And that -- does that predispose her to -- what was the
11 term you used?

12 A. Well, typically when you have HPV, a high-risk category,
13 that can increase your risk for having cervical dysplasia,
14 which is a precancerous lesion of the cervix which, if you
15 don't follow and manage appropriately, in a small percentage of
16 patients can cause cervical cancer. Those HPV high-risk types
17 can also cause precancerous changes in the vagina and also the
18 vulvar area.

19 MR. ESTEFAN: I'll pass the witness, your Honor.

20 THE COURT: Thank you very much. Thank you.

21 Would either defendant like to inquire?

22 MR. McKINNEY: Please the Court, yes.

23 **CROSS-EXAMINATION**

24 BY MR. McKINNEY:

25 Q. Doctor, good morning.

10:05

1 A. Good morning.

2 Q. I'm Andrew McKinney. I'm Charles Bortz' lawyer. We met at
3 your deposition.

4 A. Yes.

10:05

5 Q. Have you and I had a chance to visit at all about this case
6 at any time before or after your deposition?

7 A. No, sir.

8 Q. Have you had a chance to visit with any of the lawyers in
9 this case before coming down here to testify today?

10:06

10 A. I only talked with the plaintiffs' attorney for a few
11 minutes on Sunday afternoon.

12 Q. All right. Discussing the substance of your testimony?

13 A. Discussing what they were going to ask me at trial.

14 Q. Yes, ma'am. And did -- were the plaintiffs' attorneys kind
15 enough to furnish you with Dr. Schulz' records?

10:06

16 A. They did ask me to -- through my lawyer to authenticate the
17 diagram. So, I did see Dr. Schulz' notes and also her
18 drawings, yes.

19 Q. And were you furnished, by any chance, with Dr. Schulz'
20 oral deposition that she gave up at the Mayo Clinic in
21 Minnesota?

10:06

22 A. No, I have not seen that.

23 Q. All right. And just as a background detail, you understand
24 that Dr. Schulz was the physician that examined Ms. Jones in
25 the immediate aftermath of her allegations?

10:06

10:06 1 A. Yes.

2 Q. And again, as a background matter, it's your practice and
3 perhaps the practice of most physicians to defer -- that is, to
4 give way to -- the opinions and observations of the physician
10:07 5 who actually conducts the immediate examination and observe the
6 immediate evidence, correct?

7 A. That's correct. That would be an accurate exam.

8 Q. All right. Now, let me begin by asking you about the visit
9 in your office, that you and Mr. Estefan discussed, on October
10:07 10 the 24th, 2005. And this is in evidence as Bortz Exhibit 165,
11 which I will put up for the jury.

12 And this particular office visit, are these notes
13 regarding the 18-year-old white female, are these notes in your
14 handwriting?

10:08 15 A. Yes.

16 Q. Typically, Doctor, when a patient presents at your office
17 for treatment and the patient is accompanied by a parent in the
18 actual treatment room, do you typically note the parent's
19 presence in the room with the patient?

10:08 20 A. Not typically unless it's a child.

21 Q. All right. Would it be true that you have no recollection
22 of Ms. Jones, Jamie Leigh's mother, being present with her at
23 any of her office visits when she came to see you?

24 A. I don't remember that.

10:08 25 Q. That is, you don't remember Ms. Jones being present,

1 correct?

2 A. Her mother, no.

3 Q. And do you remember ever discussing Ms. Jones' condition in
4 any way, shape, or form with Ms. Jones' mother?

5 A. No.

6 Q. All right. So, what we see here on October the 24th,
7 2005 -- well, just tell us what your record reflects.

8 A. Do you want me to read it or summarize it or --

9 Q. I want you to read it and tell us exactly what it says,
10 please.

11 THE COURT: In reading it you might also fill -- put
12 in the full names of the initials that are used.

13 THE WITNESS: Okay.

14 A. "18-year-old white female presents complaining of nausea
15 and vomiting times one day" --

16 THE COURT: Okay. But I'm sorry. I've had to do this
17 to everybody. Please slow down just a little bit --

18 MR. McKINNEY: The court reporter --

19 THE COURT: -- with every syllable for the court
20 reporter --

21 BY MR. McKINNEY:

22 Q. Yes. The court reporter needs to take down what you say;
23 and we all want to hear and absorb all your words, please.

24 A. Okay. "18-year-old white female presents complaining of
25 nausea and vomiting, times one/day, a severe headache. Patient

1 reports chronic headaches and recently seen in the emergency
2 room secondary to passing out. Diagnosed with seizure
3 disorder. Patient also wants STD screen," which stands for
4 sexually transmitted disease screen, "secondary to recent
5 boyfriend called her and said he had an STD. Exam, abdomen
6 soft, non-tender, non-distended" --

7 Q. I think we're probably good at that point. I think that
8 we've covered the substance of the record that I want to ask
9 you about.

10 Let me begin with the first part that you
11 reported regarding Ms. Jones relating to you that she had been
12 diagnosed with seizure disorder.

13 A. Uh-huh.

14 Q. That's exactly what your note reflects, is it not?

15 A. That they were -- right, from the emergency room that she
16 possibly had a seizure disorder. I think she was undergoing
17 evaluation for that.

18 Q. Does it say here "DX with seizure disorder"?

19 A. Yes.

20 Q. Does that mean "diagnosed with seizure disorder"?

21 A. Yes.

22 Q. So, would that not be a declarative statement from
23 Ms. Jones to you that she had, in fact, been diagnosed with a
24 seizure disorder and that's why you wrote it down in that
25 particular fashion?

10:11 1 A. Yes.

2 Q. Now, the next section deals with: Patient also wants an
3 STD screen secondary to recent boyfriend called her and said he
4 had an STD.

10:11 5 That's what you wrote down?

6 A. Yes.

7 Q. Now, do you recall -- let me ask the question this way.

8 If Ms. Jones' mother had been in the room during
9 the discussion of the boyfriend calling and reporting that he
10 had an STD, that's a somewhat sensitive subject, is it not, for
11 a young lady Ms. Jones' age to be reporting to you in the
12 presence of her mother?

13 A. Possibly.

14 Q. Isn't that more likely than not the kind of thing that if
15 Ms. Jones -- that is, Jamie Leigh Jones' mother -- was present,
16 that you would make a note of if you were charting this
17 particular discussion?

18 A. Are you asking me would I make a note that her mother was
19 in the room at that time?

10:12 20 Q. Yes.

21 A. Not particularly.

22 Q. Why not?

23 A. Most of my patients who are adults, I really don't note
24 that the mother is in the room at the time of their history and
10:12 25 physical.

1 Q. Most of your patients who are adults typically are not
2 accompanied by their mother, are they?

3 A. Right, most are not. Some have their mothers come.

4 Q. All right. Do you recall any sort of detailed
5 discussion -- it's not charted; but do you recall any detailed
6 discussion with Ms. Jones, Jamie Leigh Jones, not the mother,
7 back on October the 24th of 2004, regarding this STD issue?

8 A. No, I don't recall.

9 Q. All right. Now, the word "boyfriend" appears in your
10 chart.

11 A. Right.

12 Q. In other places we will see in your chart where you use the
13 word "partner" as opposed to "boyfriend"?

14 A. Okay.

15 Q. We'll get to that in a minute. But one of the things that
16 I asked you about in your deposition -- and let me just confirm
17 this here today, what doctors do when a patient comes in to see
18 a doctor is the doctor takes a history, which is exactly what
19 you were doing here, correct?

20 A. Right.

21 Q. And that is where the doctor asks the patient to describe
22 in the patient's own words what is going on in the patient's
23 life physically, emotionally or otherwise that brings the
24 patient in to see you, the doctor?

25 A. Correct.

10:14 1 Q. And what you do as the doctor is you write down, as best
2 you can, in the patient's words, not your words, what the
3 patient tells you.

4 A. That's right. I -- I put in my words what they are telling
10:14 5 me, yes.

6 Q. But you use the patient's words?

7 A. Sometimes, yes. It's a narrative.

8 Q. All right. When the patient says "boyfriend," that's what
9 you would write down, "boyfriend," correct?

10:14 10 A. Probably, yes.

11 Q. In other words, you wouldn't write down "boyfriend" if the
12 patient said, "Someone who was assaulting me called me and said
13 I had an STD." You wouldn't mentally translate that into
14 "boyfriend," would you?

10:14 15 A. No.

16 Q. If there was any reason to suspect that the individual with
17 whom -- that Ms. Jones had received the phone call from was a
18 party to a non consensual relationship with Ms. Jones back in
19 October of 2004, your chart would not reflect "boyfriend," it
10:15 20 would reflect some sort of non consensual event or
21 relationship, would it not? Because that would be relevant to
22 treatment?

23 A. Yes.

24 Q. All right. Moving on then to your entry of December the
10:15 25 22nd -- it's actually not your entry, but your physician's

10:15 1 assistant's entry of December the 22nd, which is in evidence as
2 Bortz Exhibit 170.

3 MR. McKINNEY: If we could have that brought up,
4 please. And if we could highlight the portion from here to
10:16 5 here.

6 BY MR. McKINNEY:

7 Q. Here we see on December 22nd, 2004, your -- Ms. Jones,
8 Jamie Leigh Jones, reporting to your physician's assistant that
9 she was sexually assaulted by her manager, it occurred at work,
10:16 10 an investigation is in progress. There's a claim by the
11 patient: She complains of a vaginal rash and irritation. The
12 patient did not go to the emergency room.

13 A. Yes.

14 Q. That's what your physician's assistant wrote down?

10:17 15 A. Right.

16 Q. I want to ask you some questions about this entry; but
17 before I do, let me ask you if your records reflect any
18 follow-up visits whatsoever by Ms. Jones complaining about or
19 discussing a sexual assault at work by her manager or anyone
10:17 20 else prior to the August 5th, 2005, visit, which we will talk
21 about in a moment?

22 A. I don't recall any follow-up visits regarding that matter.

23 Q. Yes. And actually, the question is: Does your chart --
24 does your record regarding Jamie Leigh Jones show any follow-up
10:17 25 visits whatsoever regarding the sexual assault at work that she

10:17 1 reported on December 22nd?

2 A. No. It looks like the next time Jamie came in is
3 January 24th, and that's when she was diagnosed with genital
4 warts.

10:18 5 Q. All right. Now, assume hypothetically with me, Doctor,
6 that the boyfriend referred to in the October 24th record, the
7 recent boyfriend who called Ms. Jones and reported that he had
8 an STD, assume that that boyfriend and the manager accused of
9 sexual assault on December 22nd, 2004, are one and the same
10:18 10 person. Can you make that assumption for me?

11 A. You want me to assume that the boyfriend she claimed on
12 October the 25th was her assailant that raped her at work on
13 December the 22nd?

14 Q. Yes.

10:18 15 A. And why do you want me to make this assumption?

16 Q. Well, I want you to make this assumption because if that
17 were a true fact, that her boyfriend in October raped her in
18 December, that most likely she would have reported that to you
19 or to your physician's assistant in some detail. Wouldn't you
10:19 20 have expected that to happen?

21 A. I don't think I understand what you're asking me.

22 Q. Do you find the situation where the boyfriend in October,
23 would be referred to as a manager at work, sexually assaulting
24 your patient to be inconsistent?

10:19 25 A. That doesn't make sense to me. I don't --

1 Q. The question or the situation?

2 A. I guess both.

3 Q. Fair enough. Let's turn now to your August 5th -- well,
4 actually, I want to touch on the December 22nd record a little
5 bit more. The way this is being reported, Ms. Jones is
6 declaring that this assault specifically took place at work,
7 correct?

8 A. That's what my PA wrote, yes.

9 Q. And your PA would write down what the patient tells her,
10 not what the PA thinks might have happened, correct?

11 A. Correct.

12 Q. The fact that the patient is reporting an investigation in
13 progress couldn't possibly be your physician's assistant's
14 imagination. That would have to be something that would come
15 directly from the patient?

16 A. Yes, otherwise Laura would not know that.

17 Q. Correct. And if there was -- a claim had been made by the
18 patient, your physician's assistant would not know that unless
19 the patient had actually made a claim?

20 A. That's correct.

21 Q. Now, one thing that occurs as a possibility -- and tell me
22 if this is right or wrong -- if a patient, any patient, were to
23 come in and see you or your physician's assistant and simply
24 report that they had been assaulted at work and not add any
25 additional detail, would you be likely or would you expect your

1 physician's assistant to say: Well, have you reported that?
2 Is this being investigated? Are you making some kind of claim?
3 Are you doing anything about this?

4 Is that the kind of question that you or your
5 physician's assistant might reasonably be expected to ask when
6 confronted with this type of allegation?

7 A. We ask to see if, you know, the police have been notified;
8 but we don't delve into all the details a lot of times of the
9 sexual assault.

10 Q. All right. Now, there's also the notation that Ms. Jones
11 did not go to the emergency room after being sexually
12 assaulted?

13 A. Yes.

14 Q. Now, most likely your physician's assistant would have
15 asked Ms. Jones if she had gone to the ER after being assaulted
16 because that's a reasonable and logical question to ask a
17 patient who is making a claim of this nature, is it not?

18 A. Yes.

19 Q. And Ms. Jones did not go to the ER, at least on this
20 occasion?

21 A. That's right.

22 Q. Now, let's move ahead briefly to August the 5th of 2005.
23 And that chart is in evidence -- or that section of your chart
24 is in evidence as --

25 MR. MCKINNEY: Well, it may not be in evidence as

1 Bortz 191. But I move for the admission of Bortz 191 at this
2 time.

3 MS. VORPAHL: No objection here.

4 MR. ESTEFAN: Let's see it.

5 MR. McKINNEY: It's the August 5th chart.

6 MR. ESTEFAN: No objection from plaintiff, your Honor.

7 THE COURT: Admitted without objection.

8 BY MR. McKINNEY:

9 Q. In the middle of this record --

10 MR. McKINNEY: And let's highlight this portion right
11 here where it states, "She reports." And the next line -- next
12 two lines, please.

13 BY MR. McKINNEY:

14 Q. What you wrote down is that: She reports she had drinks
15 with a group of coworkers that were firefighters. She reports
16 she was raped by four men that night.

17 A. Yes.

18 Q. Now, Doctor, when you're taking a history from -- when you
19 personally are taking a history from a sexual assault victim or
20 an alleged sexual assault victim, is your -- are your senses
21 heightened? Are you more aware and more alert and more
22 attentive to what your patient is saying than you might be
23 under ordinary, routine circumstances?

24 A. (No response.)

25 Q. I mean, that would seem to follow naturally; but I'm just

1 asking you.

2 A. I mean, I like to hope that I'm always alert and aware for
3 every patient visit. So, I mean, I always really pay
4 attention.

5 Q. Sure. Well, of course, you're always engaged. But when
6 the patient comes in with an alarming report of this nature,
7 that she has been raped by four men, that would be an unusual
8 situation for you, would it not?

9 A. Yes. It's uncommon.

10 Q. All right. And again, what you are doing here is you are
11 writing down what the patient tells you. That's why you say:
12 She reports she had drinks with a group of coworkers that were
13 firefighters. She reports she was raped by four men.

14 You're writing down the patient's words, correct?

15 A. Yes. Most of the time, yes, I'm recording what she's told
16 me the events of the sexual assault were.

17 Q. If Ms. Jones told you she had been raped by up to four men,
18 you wouldn't say she had been raped by four men. You would say
19 she was raped by an unknown number of assailants or believes
20 she was raped by an unknown number of assailants, perhaps as
21 many as four; in other words, you would qualify your entry,
22 would you not? Based on the patient's history?

23 A. Yes.

24 Q. Pardon me?

25 A. Yes.

10:26 1 Q. And since you did not qualify your entry to indicate that
2 the number of assailants could be less than four, can we assume
3 that Ms. Jones reported to you on August the 5th, 2005, that
4 she was, in fact, raped by four men?

10:26 5 A. Based on what's in my record, yes.

6 Q. All right. Now, you and I discussed this on your
7 deposition. Ms. Jones did not tell you, on August the 5th,
8 2005, that she had had two sips from a drink and that's the
9 last thing she remembers, she woke up the next morning with a
10:26 10 man in her room and remembered nothing from -- from the point
11 at which she had had two sips from a drink. She did not report
12 that to you, did she?

13 A. No.

14 Q. Now, that would not necessarily be inconsistent with what
10:27 15 she did report to you; but nonetheless, those additional
16 details were not reported, correct?

17 A. That's correct.

18 Q. All right. Now, let's turn back to another entry of yours,
19 another record of yours, which has been admitted into evidence
10:27 20 as Bortz Exhibit 182.

21 And I believe we determined the date is unclear
22 of this visit, but I believe we determined in your deposition
23 that this date was May the 19th of 2005. Is that correct?

24 A. Yes, that sounds correct.

10:27 25 Q. All right. Now, in case chronology becomes important here,

1 Ms. Jones reported being raped by four men in Iraq as occurring
2 on July the 28th of 2005. Do you recall that being the date of
3 her alleged rape?

4 A. (No response.)

5 Q. And if she didn't give you the date --

6 A. I say in my record the 27th or the 28th.

7 Q. All right. One day or the other?

8 A. Uh-huh.

9 Q. So, the record we're looking at now, Bortz 182, which is
10 your May 19th, 2005, admission, is two months and ten days
11 before the date of the alleged rape, or two months and nine
12 days, depending on how you count, correct?

13 A. Yes.

14 MR. McKINNEY: All right. Let's highlight the portion
15 beginning with: Patient reports.

16 Highlight this entire section, please.

17 BY MR. McKINNEY:

18 Q. Read your entry for May the 19th, 2005, two months and
19 ten days before the alleged rape.

20 A. Okay. "Patient reports genital warts have worsened. She
21 reports more outbreaks with Aldara cream. She reports vulvar
22 burning. Aldara cream causes skin irritation. Patient reports
23 possible sexual intercourse with new partner after she had
24 several drinks and passed out. Patient does not remember
25 anything."

1 THE COURT: Slowly. Slowly.

2 BY MR. McKINNEY:

3 Q. Yes. I'm going to ask you, please, to read slowly the
4 second line -- or the second portion of the patient report

5 beginning with: Patient reports possible sexual intercourse.

6 And if you would read that slowly for us, please.

7 A. "Patient reports possible sexual intercourse with new
8 partner after she had several drinks and passed out. Patient
9 does not remember anything."

10 Q. At the time of your deposition, you actually remembered
11 that particular office visit, correct?

12 A. Yes.

13 Q. Do you still remember it today?

14 A. I remember, yes, a little bit of it, yes.

15 Q. And you remember at your deposition I read to you
16 Ms. Jones' deposition testimony where she purported to explain
17 the circumstances behind your entry here?

18 A. Yes.

19 Q. What you told us at the time was that you remembered this
20 meeting and what Ms. Jones told you was not what was in her
21 deposition. What she told you was she really didn't remember
22 whether she had sex or not, she just didn't know.

23 A. That's correct.

24 Q. And so, what Ms. Jones told you two months and ten days

25 before her events in Iraq is that she had a new partner, she

10:31 1 had had several drinks, she passed out, and she didn't know one
2 way or the other whether she had had sex. That's what she told
3 you?

4 A. Yes.

10:31 5 Q. She didn't tell you that she actually remembered the event,
6 that she and her new partner had gone back to her apartment and
7 had some drinks and wanted to have some fun and that her
8 partner, in some form or fashion, managed to -- that they were
9 both wearing their underwear and that her partner, in some form
10:32 10 or fashion, managed to penetrate her vagina through his
11 underwear and her underwear. That bit of information was not
12 passed along to you, was it?

13 A. No.

14 Q. And that bit of information is inconsistent, if not
10:32 15 completely inconsistent, with your record and your memory of
16 that meeting with Ms. Jones back in May of 2005. Fair
17 statement?

18 A. Yes.

19 Q. Now, I want to roll forward, please, Doctor, to your August
10:32 20 the 5th examination of Ms. Jones after she returned from Iraq.

21 And I'm going to have to get something to help me
22 with this.

23 MR. MCKINNEY: Your Honor, I move for the admission --
24 just as an aside, I move for the admission of Bortz 170, which
10:33 25 is the chart note from December 22nd -- December 22nd, 2004.

1 MS. VORPAHL: No objection here.

2 MR. ESTEFAN: No objection from plaintiff, your Honor.

3 THE COURT: Admitted without objection.

4 MR. McKINNEY: Let me get back to my -- there we go.

5 Your Honor, I would like to approach the flip
6 chart for just a moment --

7 THE COURT: You may.

8 MR. McKINNEY: -- to illustrate something for the
9 jury.

10 BY MR. McKINNEY:

11 Q. Doctors, when they're taking a history, frequently write in
12 shorthand, correct?

13 A. Yes.

14 Q. And our jury will be reviewing medical records in the jury
15 box; and so, I want to give them a key for some of the
16 shorthand that they will see in a doctor's records.

17 Can you see this chart, Doctor?

18 A. Yes.

19 THE COURT: On your screen is easiest, I think. You
20 can see it on your screen, too.

21 THE WITNESS: Uh-huh.

22 BY MR. McKINNEY:

23 Q. The symbol of an O with a little mark above it, it can be a
24 tilde or a slash or just a line or whatever, that means "with,"
25 correct?

10:34 1 A. Well, most of the time it's actually a C with a bar
2 across --

3 Q. All right.

4 A. -- means "with."

10:35 5 Q. The zero with the slash means "without"?

6 A. Right, or "no."

7 Q. Or "no."

8 Now, on August the 5th, when Ms. Jones came to
9 see you and reported that she had been raped by four men, you
10 performed a pelvic examination, correct?

11 A. Yes.

12 Q. And as a part of performing a pelvic examination,
13 necessarily you visualize the inner thighs and the thighs from
14 pelvis to knee?

10:35 15 A. Yes.

16 MR. ESTEFAN: Your Honor, I'm sorry. Mr. McKinney has
17 said, on a couple of occasions, August 5th. I believe this
18 visit is August 2nd.

19 MR. MCKINNEY: That's correct. I'm wrong. Record --
10:35 20 Mr. Estefan is right.

21 THE COURT: Everybody understands that correction?
22 Yeah.

23 MR. MCKINNEY: I wrote down August the 5th on my
24 little sticker here.

10:36 25 THE COURT: You're forgiven.

10:36 1 MR. MCKINNEY: Sorry.

2 BY MR. MCKINNEY:

3 Q. August the 2nd, you're able to visualize the inner thighs
4 completely and close enough to observe any bruising or marks of
10:36 5 any type, correct?

6 A. Yes.

7 Q. And you did not notice -- note any bruising or marks of any
8 type on the inner thigh?

9 A. No, I did not.

10:36 10 Q. All right. Ms. Jones did not complain of any vaginal or
11 pelvic or rectal or anal pain on August the 2nd of 2005 --

12 A. No.

13 Q. -- correct? Is that a fair statement? Is that a true
14 statement?

10:36 15 A. Yes, that's true.

16 Q. And it's your experience, is it not, Doctor, that when a
17 patient comes to you and is in significant pain, pain that
18 affects their ability to move their body in a particular way,
19 pain that is -- particularly if it is unrelenting, unrelenting,
10:37 20 profound pain, they verbalize that pain -- they verbalize that
21 pain to you, do they not?

22 A. Usually, yes.

23 Q. Far more often than not, correct?

24 A. Yes.

10:37 25 Q. It would be unusual, for example, for a patient to come see

10:37 1 you and have, let's say, profound, horrific chest pain because,
2 after all, you're an OB-GYN -- profound, horrific chest pain
3 and not mention something to you about that. That would be
4 unusual?

10:37 5 A. Yes.

6 Q. And it would be unusual for a patient to mention that
7 profound, horrific pain and you not to make a note of it in
8 your chart and, in fact, to examine the part of the body
9 complained about. That would be highly unusual, would it not?

10:38 10 A. Right.

11 Q. Now, Doctor, you noted that the external female genitalia
12 was erythematous with slight edema and no lacerations, correct?

13 A. Yes, that's what I noted.

14 Q. And this was a record that you made actually at the time of
10:38 15 your examination, correct?

16 A. Right. Either that day or the next day.

17 Q. All right. I want to talk with you about the erythema, if
18 I'm saying that word correctly.

19 A. Erythema.

10:38 20 Q. Erythema. All right. I have a hard time with medical
21 words.

22 Erythema can be caused by any number of things,
23 can it not?

24 A. Yes.

10:39 25 Q. It is not indicative of or probative of consensual or

10:39 1 non-consensual sex. It's consistent with both, is it not?

2 A. It can be, yes.

3 Q. And, in fact, if you go back -- and why don't you do this
4 for us. Go back to your July 20th entry regarding Ms. Jones.

10:39 5 A. (Complies.)

6 Q. Are you there?

7 A. Yes.

8 Q. And, in fact, did Ms. Jones not have erythema on July the
9 20th?

10:39 10 A. Yes. I wrote "slight erythema."

11 Q. Slight erythema. Ms. Jones had a yeast infection on July
12 the 20th, did she not?

13 A. Right.

14 Q. She also had one on June the 23rd, I believe, if you check
10:40 15 the records.

16 A. June 3rd?

17 Q. I had it as the 23rd, but I could be wrong.

18 A. Yeah. Actually, my PA wrote Diflucan given in case yeast
19 starts.

10:40 20 So, at that time, I don't think she did.

21 Q. Now, Ms. Jones, when you saw her on August the 2nd, you've
22 told us that she was calm, correct?

23 A. Yes.

24 Q. And she was calm throughout your visit with her?

10:41 25 A. Yes.

10:41 1 Q. Calmness is not inconsistent with having been sexually
2 assaulted, is it?

3 A. No.

4 Q. All right. If we drop down on your chart note on August
10:41 5 the 2nd --

6 MR. MCKINNEY: If you put that back up, please.

7 Drop down to the -- no. Right down here,
8 please -- no. Drop down. Right here: Patient reports.

9 And highlight this portion right here, through
10:42 10 the word "hypervigilance."

11 BY MR. MCKINNEY:

12 Q. Okay. What you noted here, Doctor, is that Jamie Leigh
13 Jones reported to you that since the rape had occurred, she had
14 difficulty sleeping and also was showing -- also is having
10:42 15 flashbacks, nightmares, hypervigilance, correct?

16 A. Yes, that's what I wrote.

17 Q. Now, you did not observe any hypervigilance, correct?

18 A. Not at that -- no.

19 Q. And so, that means that Ms. Jones -- it's called
10:42 20 self-reporting -- that is, she diagnosed herself with
21 hypervigilance or believed that she had hypervigilance and was
22 reporting that to you, correct?

23 A. Right.

24 Q. Let's talk about hypervigilance for a little bit. It's not
10:43 25 a voluntary condition, is it?

10:43 1 A. No.

2 Q. It's an involuntary response that people have as a result
3 of a variety of psychiatric and personality disorders and also
4 it's a symptom of post-traumatic stress disorder, correct?

10:43 5 A. Right.

6 Q. And a hypervigilant person -- well, put it a different way,
7 hypervigilance is an observable condition, is it not?

8 A. It can be, yes.

9 Q. And hypervigilance, when it's observed, is a state of
10 nervous distraction, eyes darting around the room, inability to
11 focus, essentially an outward manifestation of the patient
12 being afraid, which is where the word "hypervigilance" comes
13 from, the -- it's not just someone being vigilant or keeping a
14 lookout; they are keeping a lookout in a hyper fashion. That's
10:43 15 what the word means and that's what we see in people who are
16 hypervigilant, correct?

17 A. Yes.

18 Q. We don't see, in a hypervigilant person, a person sitting
19 and conversing calmly and understanding and appreciating their
10:44 20 environment and reacting appropriately to their environment for
21 days on end without any indication of nervousness or
22 distraction. That's not hypervigilance, is it?

23 A. No.

24 Q. Did you ever wonder how it was that Ms. Jones came to learn
10:45 25 of the term "hypervigilance" such that she was able to report

1 to you on August the 2nd that she was experiencing
2 hypervigilance?

3 A. No. I don't know.

4 Q. All right. And here's another question for you. Normally
5 people who are hypervigilant are not aware of being
6 hypervigilant, are they?

7 A. Probably not unless they're seeing a psychologist.

8 Q. Right. They would have to go see a professional and the
9 professional would make the diagnosis of hypervigilance and
10 report it to the patient and then the patient would then know
11 that the patient was hypervigilant because one of the things
12 about hypervigilance is, like many other personality disorders
13 or personality issues or emotional issues, is the person who is
14 experiencing the issue has no idea they have the problem,
15 correct?

16 A. That can be correct, yes.

17 Q. Make sure I've covered all the records I meant to chat
18 about.

19 We looked at -- or you were shown by Mr. Estefan
20 a phone message, which I had marked. It was February the 24th.

21 Here we go.

22 MR. MCKINNEY: Bortz 177, I move for the admission of
23 Bortz 177.

24 MS. VORPAHL: No objection here.

25 MR. ESTEFAN: No objection from plaintiff.

10:47

1 THE WITNESS: Admitted without objection.

2 MR. McKINNEY: Actually, I forgot something.

3 THE COURT: You still want that admitted?

4 MR. McKINNEY: I do want it admitted, yes.

10:47

5 THE COURT: All right. It's admitted.

6 BY MR. McKINNEY:

7 Q. Back to August the 2nd. I need to chat with you some more
8 about lacerations. You charted on August the 2nd that there
9 were no lacerations, correct?

10:47

10 A. Yes.

11 Q. Subsequently, you wrote a letter saying that there was a
12 small laceration, correct?

13 A. Yes.

14 Q. And told the jury, in response to Mr. Estefan's question,
15 that you now remember a small laceration, right?

10:47

16 A. I think she had a small abrasion.

17 Q. All right. What is an abrasion?

18 A. Basically it's like a scratch where the superficial layers
19 of the skin have been taken off.

10:48

20 Q. All right. And where was this scratch?

21 A. On the right side of her introitus.

22 Q. What's an introitus?

23 A. The opening to the vagina.

24 Q. All right. Now, you didn't chart that during your

10:48

25 examination, correct?

10:48

1 A. No, I did not.

2 Q. And you told us, because we asked you about this on your
3 deposition --

4 A. Yes.

10:48

5 Q. -- that as between your medical record and the letter, you
6 would trust your medical record for being accurate, correct?

7 A. (No response.)

8 Q. I'll be happy to show you your page and line if you need to
9 see it.

10:49

10 A. I mean, technically the medical records is my documentation
11 of my exam that day; and that is supposed to be the most
12 accurate. The letter that I wrote in September seems to --
13 there's definitely a discrepancy between my note and that
14 letter.

10:49

15 Q. I would like to chat with you now about fissures and
16 lacerations. You use those terms interchangeably, do you not?

17 A. Yes.

18 Q. Have you had a chance to review the deposition testimony?
19 Was that furnished to you by plaintiff's counsel, by Ms. Jones'
20 counsel, along with Dr. Schulz' records?

10:49

21 A. No, I have not seen her deposition.

22 Q. All right. If Dr. Schulz draws a clear distinction between
23 fissures and lacerations, that would simply mean that she is
24 seeing something different than what you are interpreting her
25 to see, correct?

10:50

10:50

1 A. Say that one more time.

2 Q. Yes. The jury will hear from Dr. Schulz in due course.

3 Dr. Schulz draws a distinction between -- just assume with me,
4 please, that Dr. Schulz draws a distinction and specifically

10:50

5 states she did not see lacerations, she saw fissures --

6 A. Right.

7 Q. -- consistent with friction, internal or external friction.

8 That is a different concept than what you interpret a fissure
9 to be. You interpret a fissure to be a laceration, correct?

10:50

10 A. Well, lacerations are typically a deeper cut compared to a
11 fissure, it sounds like what Dr. Schulz is referring to.

12 Q. Some doctors, and perhaps many doctors, refer to a
13 "fissure" as simply a split in the skin, like with chapped lips
14 or something of that nature?

10:50

15 A. Right.

16 Q. And a fissure of that nature can be the product -- it can
17 be the product of penetration, can it not?

18 A. Yes.

19 Q. It can be the product of external friction, can it not?

10:51

20 A. Yes.

21 Q. It can be the product of a skin condition, can it not?

22 A. Uh-huh, yes.

23 Q. You have to say "yes" or "no" for the court reporter.

24 And along those lines, we did discuss in your

10:51

25 deposition the fact that, while you would expect a patient to

10:51 1 fully recover from laser surgery of the type that you performed
2 within four weeks, it's certainly within the realm of
3 reasonable possibility -- that is, the range of potential
4 patient reactions -- it is well within the range of potential
10:51 5 patient reactions to have lingering friability, lingering
6 issues with the surgical site even two months later. Isn't
7 that so?

8 A. No. I would disagree.

9 Q. You didn't say that in your deposition?

10:52 10 A. You didn't ask me that in my deposition, sir.

11 Q. All right. You did say that there could be, for as much as
12 two months, continued --

13 A. Discomfort.

14 Q. Pardon me?

10:52 15 A. I think they asked about continued discomfort or pain in
16 that area, which is a little bit --

17 Q. I think there was something else as well. Let me see if I
18 can find it.

19 A. (Shaking head.)

10:52 20 Q. Let me see if I can find it.

21 Here's what I meant to say.

22 MR. MCKINNEY: May I just refresh the witness'
23 recollection so maybe we can make sure we're on the same page,
24 show her the deposition?

10:53 25 THE COURT: Are you going to ask her about the

1 deposition or show her something?

2 MR. McKINNEY: I would like to show her her
3 testimony --

4 THE COURT: That's fine.

5 BY MR. McKINNEY:

6 Q. This is what I was referring to, Doctor, right here.

7 A. I think --

8 THE REPORTER: I'm sorry?

9 BY MR. McKINNEY:

10 Q. Yes. I'll rephrase the question.

11 A. Okay.

12 Q. It can take up to two months for the site of laser surgery
13 to heal, correct?

14 A. I have not seen that.

15 Q. But you told us it could?

16 A. I think you're taking it out of context.

17 Q. We have a clean copy of the deposition. Mine has notes on
18 it. I don't want to take anything out of context; so, we'll
19 put it up and look at it together.

20 And while we're looking for a clean copy of your
21 deposition, if after performing laser surgery at the location
22 where you operated, if in the intervening period or in the
23 following two months, if that same area had been treated with
24 cryosurgery, cryotherapy, would that speed up or prolong the
25 healing period?

10:55 1 A. May I clarify your question?

2 Q. Of course.

3 A. You're asking me if a patient had laser surgery of the
4 vulvar and in between that two months of healing, she

10:55 5 additionally had cryotherapy of the vulva in the same area,
6 would that delay her healing?

7 Q. Yes.

8 A. Is that the question you're asking me?

9 Q. Yes.

10:55 10 A. So, yes, that would delay healing. If the patient -- a
11 person had laser therapy and two weeks later had cryotherapy in
12 the same area, that would delay healing.

13 Q. All right. In that case we don't need to go back and
14 revisit your deposition.

10:55 15 In case it becomes important, when a person has
16 Human Papilloma Virus, HPV, and they are tested for HPV, can
17 one strain show up on one test and a different strain show up
18 on a different test all from the same exposure?

19 A. Yes.

10:56 20 Q. So, the fact that different strains show up at different
21 times does not mean different exposures to different partners
22 who are carrying HPV?

23 A. Right. It could be one exposure or two exposures.

24 Q. Final couple of questions regarding the management of HSV,
10:56 25 Herpes Simplex virus. After the initial outbreaks, my

1 understanding is that the therapies employed by doctors such as
2 yourself are called "repressive therapies." Is that right?

3 A. Yes. Suppressive therapy.

4 Q. Suppressive. I said "repressive." Suppressive.

5 And that's an anticipatory type treatment where
6 the patient takes medicines and it suppresses the viral
7 activity?

8 A. Yes.

9 Q. And a patient can manage their life and, taking suitable
10 precautions with sex partners, can live a completely normal
11 life with HSV. In fact, you probably have many patients who
12 are doing so?

13 A. Yes.

14 Q. HSV is, unfortunately, a very common disease?

15 A. Very common.

16 Q. As is HPV?

17 A. Very common.

18 THE COURT: Can either of those two be communicated to
19 an unsuspecting partner even while the suppressive therapy is
20 working effectively?

21 THE WITNESS: It's much less likely. Because what
22 happens is the medication is preventing asymptomatic viral
23 shedding. That would be someone who is actually shedding the
24 virus and have no symptoms of the herpes virus, like an ulcer.
25 So, it dramatically prevents recurrence.

1 Like in married couples, if one partner is known
2 to have genital herpes and does not want to transmit it to
3 their partner, they can take daily Valtrex, which is an
4 antiviral medicine. So, they are preventing the transmission
5 to their partner or husband.

6 THE COURT: Okay. But the likelihood of transmission
7 rises to the extent the therapy is discontinued?

8 THE WITNESS: Right.

9 THE COURT: Okay.

10 BY MR. McKINNEY:

11 Q. Regarding the management of Human Papilloma Virus in a
12 woman, the recommended protocols, once a diagnosis is made, is
13 to get an annual Pap smear and check for dysplasia and
14 intervene proactively, correct?

15 A. That's correct.

16 Q. And with proper management and timely intervention, the
17 risks of something bad happening downstream are statistically
18 quite remote?

19 A. That's correct.

20 Q. Final questions -- or final area. As an OB-GYN, you
21 counsel many patients who have sexually transmitted diseases or
22 who have partners with sexually transmitted diseases?

23 A. Yes.

24 Q. And would it be fair to say, Doctor, that in counseling
25 those people, you advise them to take precautionary measures,

10:59 1 to not engage in unprotected sex, and not engage in sex when
2 their partner -- when their or their partner's disease is
3 active?

4 A. That's right. You should abstain or use condoms to
10:59 5 minimize risk of spread.

6 Q. And, unfortunately, in this day and age, given the
7 prevalence of HPV, those protocols, those practices, are fairly
8 well understood even by the lay public. Is that your
9 observation?

11:00 10 A. Yes.

11 MR. MCKINNEY: Pass the witness.

12 THE COURT: Okay. Do you want a short break now?

13 Okay. Would all please rise for the jury.

14 *(Recess was taken from 11:00 a.m. to 11:16 a.m.)*

11:16 15 *(Jury present)*

16 THE COURT: Members of the jury, please be seated.

17 Ms. Vorpahl, do you wish to inquire?

18 MS. VORPAHL: May it please the Court?

19 THE COURT: Okay.

11:16 20 MS. VORPAHL: Yes, I do wish to inquire.

21 **CROSS-EXAMINATION**

22 BY MS. VORPAHL:

23 Q. Good morning. How are you, Dr. Scott?

24 A. Good morning. Fine.

11:16 25 Q. My name is Joanne Vorpahl. You and I have met on one prior

11:16 1 occasion and that was at your deposition?

2 A. That's correct.

3 Q. And we haven't spoken other than on the occasion of your
4 deposition?

11:16 5 A. That's correct.

6 Q. I have just a few questions, I hope, to ask you. I would
7 like for you to look at, I think, Page 14 of your records,
8 perhaps. It is the new patient questionnaire that Ms. Jones
9 completed. And it's been marked in this trial as Exhibit B158,
10 and it's been admitted.

11:17 11 Do you have that there in front of you?

12 A. Yes.

13 Q. Okay. This is a questionnaire that you have new patients
14 complete themselves when they come in?

11:17 15 A. Correct.

16 Q. All right. And this is consistent with what you've
17 testified to, that the first time you saw Ms. Jones was on
18 November 19th of 2003. Is that right?

19 A. I saw her November 20th. I think she filled out the form
11:17 20 the day before.

21 Q. Did she come into your office to complete the form or had
22 you sent it to her?

23 A. I don't know.

24 Q. Okay. One or the other of those two things, though?

11:18 25 A. Yes.

11:18 1 Q. Is that correct?

2 A. I would think so, yes.

3 Q. Okay. All right. And she reported on our Exhibit B158,

4 the new patient questionnaire, that she was anemic. Is that

11:18 5 right?

6 A. That's correct.

7 Q. She reported that she had been hospitalized in 2002 for

8 West Nile. Is that right?

9 A. That's right.

11:18 10 Q. What would you understand that "West Nile" to mean?

11 A. I assume it meant she was hospitalized for the West Nile

12 virus.

13 Q. All right. And she indicated that her current medications

14 were Zoloft and Lamictal, which you talked about in response to

11:18 15 prior questioning. Is that right?

16 A. That's right. It's Lamictal.

17 Q. Okay. On the second page the patient completes what's

18 called a social history. Is that right?

19 A. Yes.

11:18 20 Q. And in that social history, Ms. Jones indicated that she

21 never used alcohol. Is that right?

22 A. Yes.

23 Q. And she noted a spouse or significant other named Jonathan

24 Carroll. Is that correct?

11:19 25 A. Correct.

11:19 1 Q. And indicated that: Number of years together, one?

2 A. Yes.

3 Q. If you'll turn to your record that is -- are your documents
4 numbered as ours were at the time of the deposition?

11:19 5 A. If you can give me a date, I can find it.

6 Q. All right. Well, it's actually, again, a document that
7 Ms. Jones completed -- but it seems not to be with these other
8 documents -- on the occasion of her first visit on November the
9 20th of 2003. And it says primary visit -- or "Reason for
10 visit today."

11 And it looks like it bears your number of SC077,
12 if that's helpful.

13 A. Yes, I have that.

14 Q. All right. And the primary reason for Ms. Jones' initial
15 visit was: Pain on lower right side of stomach?

11:20

16 A. Yes.

17 Q. All right. And then below that the form says: Please
18 place a checkmark by any symptoms which are currently causing
19 you concern, disturbing your daily activities, or interfering
20 with your quality of life.

11:20

21 And Ms. Jones indicated that fatigue fit that
22 category. Is that correct?

23 A. Yes.

24 Q. That nausea, vomiting, and indigestion fit that category?

11:20 25 A. Yes.

11:20

1 Q. That she had pain in her breasts?

2 A. Yes.

3 Q. That she had pelvic pain?

4 A. Yes.

11:20

5 Q. And she signed that form at the bottom. Is that right?

6 A. Yes.

7 Q. And you later signed the form yourself?

8 A. Right.

9 Q. You saw Ms. Jones in February of 2004. Is that correct?

11:21

10 A. Yes.

11 Q. And I'm looking at a document that would bear your mark
12 SCO27, just for your reference.

13 These are your notes of that -- of the occasion
14 of February 11th, 2004, on which you saw Ms. Jones. Is that
15 right?

11:21

16 A. Yes.

17 Q. Okay. The first sentence says: 19-year-old WF -- which
18 stands for "White female"?

19 A. Correct.

11:21

20 Q. "Presents complaining of" -- and I couldn't read this word
21 yesterday. These records came into evidence yesterday. Can
22 you tell us what that next word is?

23 A. Yes. It's "midepigasttric pain."

24 Q. What is midepigasttric pain?

11:21

25 A. That's pain located in the middle of the upper quadrant

1 (indicating).

2 Q. Is that consistent with any -- is there any diagnosis you
3 can make just from knowing that she had midepigasttric pain?

4 A. Well, typically when someone has a complaint in a certain
5 location, there's a differential diagnosis. Are you asking me
6 what the differential diagnosis would be?

7 Q. Yes, if you're able to say that based on your own
8 experience.

9 A. That would be things like gastric ulcers, gallstones, an
10 infection of the gall bladder, which is colicystitis. Those
11 would be the most common things that would cause pain in that
12 area. Pancreatitis, that's much more rare.

13 Q. And on that occasion, February 11th of 2004, did Jamie
14 Jones report to you increased stress recently?

15 A. Yes, I noted that in my chart.

16 Q. Okay. On the next page -- actually, it is your prior page,
17 because your records are built from the bottom up. Is that
18 right?

19 A. If you can give me a date, I can find it. Mine are all in
20 chronological order.

21 Q. Okay. February the 27th of 2004.

22 A. Yes.

23 Q. On that occasion she came in again complaining of some sort
24 of stomach pain that you called gastritis. Is that right?

25 A. Yes. That's what I attributed her midepigasttric pain to.

1 Q. And you also discussed with her some issue of domestic
2 violence. Is that correct?

3 A. Yes.

4 Q. What does that note indicate on February 27th of 2004?

5 A. What are you asking me?

6 Q. Would you read it aloud, please?

7 A. Do you want the entire note?

8 Q. Just where it says "A/P."

9 A. Okay. "A/P" stands for "assessment and plan." I wrote:

10 Number 1, gastritis, which is an inflammation in the stomach
11 wall, improved on --

12 THE COURT: Hold on a second.

13 MR. ESTEFAN: We probably need to approach on this,
14 your Honor.

15 THE COURT: Is this a new exhibit?

16 MS. VORPAHL: No. The exhibit was admitted a day or
17 two ago, your Honor.

18 THE COURT: Tell me the nature of the objection.

19 MR. ESTEFAN: I think we might be getting into the
20 Court's ruling on 412 evidence.

21 *(At sidebar with all counsel)*

22 MS. VORPAHL: I'm asking her about this note right
23 here, and I asked her to read it.

24 MR. ESTEFAN: The doctor doesn't have a redacted
25 version, so --

1 MS. VORPAHL: I asked her to read after "A/P."

2 THE REPORTER: I'm sorry. I can't hear, Judge.

3 MS. HOLCOMBE: We can give her a redacted version, but
4 she was asked to read from right here.

5 MS. VORPAHL: We can give --

6 MR. ESTEFAN: I don't want to get into it.

7 THE COURT: Okay. That's fine. Everybody is in
8 agreement?

9 MR. ESTEFAN: Right.

10 *(In open court)*

11 MS. VORPAHL: Your Honor, may I hand the witness this
12 redacted exhibit?

13 THE COURT: You may. You may.

14 BY MS. VORPAHL:

15 Q. I'm going to hand you a copy of a copy of your records; and
16 will you see if but for some redactions, some deletions from
17 that record, whether it reads the same as the record that you
18 were just reading from?

19 A. Yes.

20 Q. Okay. What I had asked was if you would simply read where
21 it says "A/P." And will you say in full what is abbreviated?

22 A. Yes.

23 "Assessment and plan, gastritis, improved on
24 Protonix, Number 2, domestic violence, discuss safety,

25 restraining order, cycle of abuse. Montgomery County Women's

1 Center card given."

2 And the last part is: Face-to-face time,
3 15 minutes.

4 Q. So, that indicates that you spoke with her 15 minutes?

5 A. Right.

6 Q. Okay. If you will take a look next at notes of a visit on
7 September the 15th of 2004. And there's actually a diagram on
8 the right side. Do you have that --

9 A. I have that, yes.

10 Q. -- document with you?

11 This is the last page of KBR Exhibit 81
12 previously admitted.

13 MS. VORPAHL: Are you going to put it up?

14 BY MS. VORPAHL:

15 Q. Okay. This is an exhibit that we talked some about
16 yesterday.

17 MS. VORPAHL: If we could enlarge the portion on the
18 right-hand side, at the top. No. Below that, a little bit --
19 yes, that section.

20 BY MS. VORPAHL:

21 Q. There's an indication there -- well, first of all, let me
22 ask you this: Is this a form that you used on the occasion of
23 September 15th of 2004, to take down information on a visit
24 that you had with Ms. Jones?

25 A. Yes. This is all mostly my handwriting, yes.

11:28 1 Q. Okay. Do you see where it says "extremities" and it says
2 "broke tibia"?

3 A. Uh-huh.

4 Q. Can you tell us what that means?

11:28 5 A. I think I referred to she had a history of a broken tibia.

6 Q. Okay. So, it was just a history of; she didn't present
7 with a broken tibia?

8 A. Yes.

9 Q. And then below that where it says "neuro," can you tell us
11:28 10 what that says?

11 A. That says: Headaches three to four times per week.

12 Q. Okay. And below that?

13 A. I wrote: Family history of brain tumors.

14 Q. Do you recall who she said had a family history -- or had
11:28 15 brain tumors in her family?

16 A. No, I don't recall what relative it was.

17 Q. Okay. If we could take a look at your notes on a visit
18 dated October 25th of 2004, will you read, please, your
19 notes -- and perhaps you could explain to the jury.

11:29 20 As I understand it, the sort of bigger
21 handwriting is one of your assistants and then the smaller
22 handwriting below it is, on each of these records, your
23 handwriting?

24 A. Yes. Most of the time the chief complaint, which is "CC"
11:29 25 on this document, is taken by the nurse.

11:29 1 Q. I'm sorry to interrupt you.

2 MS. VORPAHL: We are on Exhibit -- Bortz Exhibit 165,
3 which was admitted previously.

4 Thank you, yes. If you could enlarge that.

11:29 5 BY MS. VORPAHL:

6 Q. Now, if you can -- I'm sorry to have interrupted you.

7 If you can explain there -- we see that there's
8 big handwriting sort of at the top and smaller handwriting.
9 And I think I had asked you about the bigger handwriting being
10 someone else's and the smaller handwriting below it and --
11 ending with your signature being yours. Is that right?

12 A. That's right.

13 Q. Okay. So, can you tell us, please, what happened on
14 October 25th of 2004, why Ms. Jones was there and what your
11:30 15 assessment was?

16 A. She presented that day complaining of nausea, vomiting, and
17 a severe headache. She had recently been seen at the emergency
18 room at St. Luke's due to passing out. And it was from that
19 hospitalization that she was diagnosed with a seizure disorder.

11:30 20 And so, she also, at that time, wanted a
21 screening for sexually transmitted diseases. So, I performed
22 an exam on that day. I essentially treated her for cervicitis,
23 which is inflammation of the cervix, with antibiotics; and I
24 also gave her some pain medicines for her headache.

11:31 25 Q. And then at the bottom of that notation, it says: Seizure

11:31

1 disorder, refer to Dr. Wang or Wong?

2 A. Yes.

3 Q. Is that right?

4 A. Dr. Wang, yes.

11:31

5 Q. Dr. Wang. And was he a neurologist?

6 A. Yes, he's a neurologist.

7 Q. All right. You then received a telephone message from
8 Jamie Jones on November the 16th of 2004. Is that correct?

9 A. Yes.

11:31

10 Q. And it indicates that Ms. Jones was still having symptoms
11 of a bladder infection, and it says: In extreme -- underlined
12 twice -- pain.

13 MS. VORPAHL: This is KBR 102, previously admitted.

14 A. That's correct.

11:32

15 BY MS. VORPAHL:

16 Q. All right. All right. And you saw her that same day.

17 MS. VORPAHL: This is KBR Exhibit 103.

18 BY MS. VORPAHL:

19 Q. That same day on November 16th, 2004, you saw her. Is that
20 correct?

11:32

21 A. Yes.

22 Q. There is --

23 MS. VORPAHL: If we could enlarge the first
24 handwritten portion on that document. Thank you.

11:32

25 BY MS. VORPAHL:

11:32 1 Q. There's an indication in the next to last line there that
2 I'm not sure I understand. It looks like maybe a circle with a
3 plus sign in it and then an N and then a circle with a plus
4 sign in it and then the word "dizziness." Could you interpret
11:32 5 that for me?

6 A. Yes. This was a note written by my physician assistant,
7 Laura Sheffer, and the "plus N," I assume, refers to "plus
8 nausea," meaning she had symptoms of nausea, and then "plus
9 dizziness" refers to the fact that she had dizziness at that
11:33 10 visit.

11 Q. Okay. Now, at that same visit Ms. Jones completed a
12 patient assessment questionnaire. Is that right?

13 A. Yes.

14 Q. And that is Exhibit B166, previously admitted.

11:33 15 MS. VORPAHL: If we could take a look at the lower
16 portion of that exhibit.

17 BY MS. VORPAHL:

18 Q. There's a question that says: Do you have pain associated
19 with your bladder or in your pelvis?

11:33 20 And her answer is what?

21 A. She marked: Always.

22 Q. And then below that two questions is: If you have pain, is
23 it usually mild, moderate, or severe?

24 And her answer was what? It's Question 7A.

11:34 25 A. "Severe."

11:34 1 Q. And then Question 7B is: Does your pain bother you?

2 And her answer -- the options were:

3 Occasionally, usually, or always.

4 And her answer was what?

11:34 5 A. "Usually."

6 Q. All right. Ms. Jones completes another patient assessment
7 questionnaire on December 22nd of 2004. Is that correct?

8 MS. VORPAHL: And that's Bortz Exhibit 171.

9 A. Yes.

11:34 10 BY MS. VORPAHL:

11 Q. And on that occasion -- that's dated December 22nd of 2004,
12 approximately a month or a month and a week later. And again,
13 she answers those questions that she always has pain associated
14 with her bladder or in her pelvis. Is that right?

11:35 15 A. You're referring to 17A or --

16 Q. I'm actually referring to Question Number 5.

17 A. Okay. Yes, she checked "always."

18 Q. All right. And this time she says that her pain is
19 moderate. Is that right?

11:35 20 A. Yes.

21 Q. Whereas it previously had been severe?

22 A. Right.

23 Q. Now, on that same day she completes a form that we've seen
24 before. This is Bortz Exhibit 172.

11:35 25 And she -- and again, this is December 22nd of

11:35 1 2004, the same day she completed the prior questionnaire,
2 right?
3 A. Right.
4 Q. All right. And she indicates that she is suffering
11:35 5 depression and insomnia. Is that right?
6 A. Yes.
7 Q. Diarrhea and upper abdominal pain. Is that correct?
8 A. Yes.
9 Q. Hearing loss?
11:36 10 A. Yes.
11 Q. Pain with urination?
12 A. Yes.
13 Q. Frequent urination?
14 A. Yes.
11:36 15 Q. A skin rash?
16 A. Yes.
17 Q. Mood swings?
18 A. Yes.
19 Q. And a vaginal discharge?
11:36 20 A. Yes.
21 Q. And Ms. Jones signed that -- signed that document on
22 December the 22nd, 2004, the day of the visit?
23 A. Right.
24 Q. And you signed it right below her that same day?
11:36 25 A. Yes. That's Laura Sheffer, my PA, yes.

11:36 1 Q. Oh, I'm sorry. Okay. So, that's your PA's signature on
2 this document?

3 A. Yes.

4 MS. VORPAHL: Okay. Your Honor, I would move
11:36 5 admission of Bortz 171 and 172, which I don't think have been
6 previously admitted.

7 MR. ESTEFAN: No objection from the plaintiff, your
8 Honor.

9 THE COURT: Okay. Admitted without objection.

11:37 10 BY MS. VORPAHL:

11 Q. We've been through the rest of your records from
12 December 22nd, 2004. So, I'm not going to retread that ground.
13 I'm going to ask you instead to take a look at your notes from
14 a visit, January 19th of 2005. We also looked at these before.

11:37 15 MS. VORPAHL: This is Bortz Exhibit 173.

16 BY MS. VORPAHL:

17 Q. This is where you indicate labial edema and lesions on what
18 I think you called the "posterior fourchette"?

19 A. Yes. These are my PA notes; but, yes, I can interpret all
11:38 20 of them.

21 Q. All right. And so, on -- this is the occasion on which
22 Ms. Jones had come in complaining of these lesions. Is that
23 right?

24 A. That's correct.

11:38 25 Q. Okay. Take a look, if you will, please, at the record

1 dated June 3rd, 2005, which is Bortz 184.

2 MS. VORPAHL: Meanwhile, your Honor, I do not believe
3 that Bortz 173 has been admitted; and I would move its
4 admission.

5 MR. ESTEFAN: Your Honor, no objection. I think these
6 are all part of Dr. Scott's record.

7 THE COURT: Okay. We'll admit it in just an abundance
8 of caution.

9 BY MS. VORPAHL:

10 Q. On June the 3rd of 2005, you see Ms. Jones again. Is that
11 right?

12 A. Yes. This is my PA, Laura.

13 Q. Okay. And she notes that there are -- if you look towards
14 the middle of the page, it says: Anus, colon, three small
15 condyloma. Is that correct?

16 A. Yes.

17 Q. What would that indicate?

18 A. She probably had three small genital warts in the anal
19 area.

20 Q. All right. And then below that, what does it indicate just
21 below that?

22 A. The "wet mount, negative"?

23 Q. Yes. And then right below that?

24 A. "Status, post-laser for condyloma."

25 Q. And so, she had had laser treatments both at the posterior

11:39 1 fourchette and at her anus. Is that correct?

2 A. Most of her treatment was from the posterior fourchette
3 down the perineal body. Sometimes if they're, like, right
4 around the anus, like, on the anus, I may not treat those.

11:40 5 Q. Well, certainly your physician assistant is noting that
6 there are condyloma on the anus. Isn't that right?

7 A. That's right.

8 Q. Okay. Do you recall whether you treated condyloma on
9 Ms. Jones' anus?

11:40 10 A. I treated mainly posterior fourchette and the perineum.

11 Q. All right. But do you recall whether you also treated
12 anal --

13 A. I don't recall that.

14 Q. All right. You don't know.

11:40 15 MS. VORPAHL: I would move admission of Bortz
16 Exhibit 184.

17 MR. ESTEFAN: No objection from the plaintiffs.

18 THE COURT: Admitted without objection.

19 BY MS. VORPAHL:

11:40 20 Q. I would like for you to identify --

21 MS. VORPAHL: Because I'm not sure this has been
22 admitted.

23 BY MS. VORPAHL:

24 Q. -- the record of Ms. Jones' May 19th, 2005, visit.

11:41 25 MS. VORPAHL: This is Bortz 182.

1 BY MS. VORPAHL:

2 Q. Again, on May the 19th of 2005, your notes indicate:
3 Patient reports possible sexual intercourse with new partner
4 after she had several drinks and passed out. Patient does not
5 remember anything.

6 Is that right?

7 A. Yes, that's what I wrote.

8 Q. And you've previously talked to both of the other lawyers
9 here about that incident, about those notes.

10 A. In my deposition and here today, yes.

11 MS. VORPAHL: Okay. I would move admission of
12 Bortz 182, your Honor.

13 MR. MCKINNEY: I think that's in.

14 MR. ESTEFAN: It's already in, I believe, but --

15 MS. VORPAHL: All right. My apologies. I just wanted
16 to make sure that it was there.

17 BY MS. VORPAHL:

18 Q. When you saw Ms. Jones on August the 2nd of 2005, she
19 reported to you that she had drinks with a group of her
20 coworkers that were firefighters. Is that right?

21 A. That's correct.

22 Q. She didn't say anything to you about being drugged, did
23 she?

24 A. She stated that she thought she might have been drugged
25 with a date rape drug.

11:43 1 Q. But you didn't write that down?

2 A. I wrote down: Patient thinks her drink may have been
3 contaminated with a date rape drug.

4 Q. And where is that?

11:43 5 MS. VORPAHL: Let's put this up, Bortz 191.

6 BY MS. VORPAHL:

7 Q. I see. It is down --

8 A. Three-quarters down.

9 Q. Yes, it is. Okay. Thank you.

11:43 10 "Patient thinks her drink may have been
11 contaminated with a date rape drug. She would like" -- and can
12 you help me with the abbreviations there?

13 A. Yes. That's "UDS." It stands for a urine drug screen.

14 Q. All right. And an STD screen?

11:43 15 A. Yes.

16 Q. Take a look, if you will, at the letter that you wrote to
17 Ms. Lynn Falanga on September the 7th of 2005.

18 A. I don't have that in my records but --

19 Q. Okay.

11:44 20 MS. VORPAHL: It is Joint Exhibit 93.

21 May I approach the witness, your Honor?

22 THE COURT: You may, yes.

23 BY MS. VORPAHL:

24 Q. Dr. Scott, can you tell me why -- what prompted you to
11:44 25 write this letter?

11:44 1 A. I actually don't remember why I wrote this letter. It was
2 at the request of, I believe, Jamie Jones, but -- I mean, it
3 was so long ago, I don't remember why I wrote it.

4 Q. Okay. You don't recall what prompted you?

11:44 5 A. No.

6 MS. VORPAHL: I have nothing further of this witness,
7 your Honor.

8 THE COURT: Okay. Any redirect?

9 MR. ESTEFAN: Your Honor, I will try to be brief.

11:44 10 **REDIRECT EXAMINATION**

11 BY MR. ESTEFAN:

12 Q. Doctor, can I ask you to go to the easel there for us and
13 take up a pen?

14 A. (Complies.)

11:45 15 Q. And flip the page on that, would you?

16 A. (Complies.)

17 Q. If you were to draw a line across the page there --

18 A. (Complies.)

19 Q. And on the far left end, draw a vertical line, a short one
11:45 20 on the line there.

21 A. Right here?

22 Q. On the line itself, yes. And on the far right end, another
23 one.

24 A. Here?

11:45 25 Q. Yes.

1 On the far left end, if that date is July 20th,
2 2005, and the far right end is August 2nd, 2005, from your
3 records, can you tell me what you wrote in regard to Jamie's
4 condition, physical condition, on July 20th, 2005?

5 A. Can I refer to my notes?

6 Q. Please.

7 A. Okay. Did you want me to state what I saw?

8 Q. And just a short note -- a short note there at July 20th,
9 especially in connection with the reason for which she
10 presented, which I think she presented, you testified, for a
11 urinary tract infection?

12 A. Uh-huh, and a yeast infection.

13 Q. But at the same time you noted what's significant to why
14 we're here, which is that the laser surgery --

15 A. (Complies.)

16 Q. Okay. And on August 2nd, Doctor, what does your note say?

17 A. (Indicating.)

18 Q. And that's a long note, I know --

19 A. Sorry.

20 Q. That's okay. And so, what is in between those two dates
21 that occurred?

22 A. Her sexual assault?

23 Q. Yes. Which is where? If you would draw a line there for
24 that?

25 A. It was on July 27th or 28th.

11:49

1 Q. And we're not counting off for --

2 A. (Indicating.)

3 Q. So, what's the date of that?

4 A. (Indicating.)

11:49

5 Q. Okay. Essentially, Doctor, would you please read what
6 you've written there for July 20th, 2005, the part of your
7 note?

8 A. Do I need to be by the mic?

9 Q. You can sit down or you can read from there, whichever.

11:49

10 A. "External female genitalia normal, slight erythema."

11 And then August 2nd, 2005: External female
12 genitalia, erythematous, slight edema, no lacerations, vagina
13 normal, cervix normal.

14 Q. And there was another note back on July 20th, I believe,
15 that -- about the condyloma result, which you've said means --

11:50

16 A. Gone away.

17 Q. Healed?

18 A. Yeah. Not present, yeah.

19 Q. One other question, Doctor. You told us that Valtrex was a
20 herpes medication?

11:50

21 A. Yes.

22 Q. What is Zovirax?

23 A. Zovirax is also a herpes medication.

24 MR. ESTEFAN: Pass the witness.

11:50

25 THE COURT: Anything further?

11:50 1 MR. MCKINNEY: I have nothing, your Honor.

2 MS. VORPAHL: Nothing further from me.

3 THE COURT: You may step down, Doctor. Thank you very
4 much.

11:50 5 THE WITNESS: Thank you, sir.

6 THE COURT: Another witness?

7 MR. ESTEFAN: We have another one, your Honor; but
8 I've got to talk with them about whether they want to -- it's
9 now up to them sort of. Because we're going to take another
10 witness out of order. It's one of their witnesses.

11 MS. VORPAHL: No. I thought we were going back to
12 Ms. Jones and finish that.

13 MR. ESTEFAN: That's up to you.

14 MS. VORPAHL: I think we ought to go ahead and finish
11:50 15 that up.

16 MR. ESTEFAN: It's up to you.

17 THE COURT: Whatever you-all want to do.

18 MR. MCKINNEY: Let's start with Ms. Jones, your Honor,
19 if that's okay.

11:51 20 THE COURT: Okay. Ms. Jones, if you would resume your
21 position.

22 MR. MCKINNEY: Before I start, your Honor, I don't
23 know what the Court's intent is with respect to the noon hour,
24 whether you want to work to 1:00 or so since we got a late
11:51 25 start?

11:51 1 THE COURT: Let me ask.

2 What's a good time for you folks to take lunch?
3 12:30? That be good? Okay. Lines are getting shorter by the
4 minute, so don't worry. Okay.

11:52 5 MR. McKINNEY: Could we put up, please, Bortz
6 Exhibit 98 and go, please, to -- don't put it up, just be ready
7 to go to it -- Page 000977.

8 **JAMIE LEIGH JONES, PREVIOUSLY SWORN, CONTINUED TO TESTIFY:**

9 **RECROSS-EXAMINATION**

11:52 10 BY MR. McKINNEY:

11 Q. Ms. Jones, good morning.

12 A. Good morning.

13 Q. You expressed the opinion yesterday, I believe -- but I
14 have to say that time is starting to run together on me -- that
11:52 15 you were assaulted by more than one man?

16 A. Yes.

17 MR. McKINNEY: Could we put up Page 000977?

18 And this is from Bortz 98, your Honor, which has
19 previously been admitted into evidence.

11:52 20 BY MR. McKINNEY:

21 Q. Ms. Jones, we're getting ready to look at the
22 conclusions -- or one of the conclusions of the official
23 Department of State investigation, which I believe you've
24 already told us is a document that you have reviewed. Have
11:52 25 you, in fact, reviewed the Department of State final

1 investigation in this case?

2 A. Some of it. Can I see it?

3 MR. McKINNEY: Let's go ahead and put Page 000977 up.

4 And go to the very bottom line and highlight, in the middle of

5 the page, the beginning of the sentence -- in the middle of the
6 line, I should say.

7 MR. HEDGES: It's not admitted.

8 MR. McKINNEY: 98?

9 MR. KELLY: Can we see what you're talking about?

10 MR. McKINNEY: Let me have the -- 98.

11 *(Sotto voce discussion between plaintiff's and defense*
12 *counsel)*

13 MR. McKINNEY: Judge, apparently I thought 98 had been
14 admitted into evidence. I was mistaken.

15 THE COURT: Yeah, we need to talk about this some
16 more. It hadn't been.

17 MR. McKINNEY: But I would like to offer one line from
18 98, which is a finding of the investigation and is not a
19 hearsay statement by any person. I would -- may I approach the
20 Bench and show the Court?

21 THE COURT: No, I think I'm familiar with the
22 statement.

23 Any objection?

24 MR. KELLY: No objection to that one line.

25 THE COURT: Okay. All right.

1 BY MR. McKINNEY:

2 Q. I'll just put it up in this fashion right here, Ms. Jones,
3 if I can; and I'll highlight it. Well, I can try to highlight
4 it.

5 MR. KELLY: You've got the whole thing up there,
6 Andrew.

7 MR. McKINNEY: Yeah, I know. Let me just --

8 BY MR. McKINNEY:

9 Q. We're going to focus, Ms. Jones, on just one sentence here.

10 MR. McKINNEY: And I'll ask the jury, please, to just
11 focus on this one sentence.

12 MR. ESTEFAN: They can see everything you're doing,
13 Andrew.

14 MR. McKINNEY: Well, I will cover it up then -- let me
15 just approach the witness then, and we'll just read it into
16 evidence.

17 THE COURT: That's fine. That's fine.

18 MR. McKINNEY: I don't want to inadvertently show
19 anything we're not supposed to.

20 BY MR. McKINNEY:

21 Q. Ms. Jones, this is one of the findings of the Department of
22 State. I'm going to read it into the record. Will you tell me
23 if I have misstated it in any way? Will you please do that for
24 me?

25 A. Can I see the whole sentence?

1 Q. The sentence says --

2 A. I won't be able to do that if I can't read the sentence.

3 Q. All right. The sentence says: There is no, slash, no
4 scientific findings that can support the theory that more than
5 one person was involved in this incident.

6 Did I read that correctly?

7 A. Yes.

8 Q. Were you aware that the State Department made such a
9 finding, that there was no scientific evidence of any kind
10 which would support the theory that anyone other than you and
11 Charles Bortz were intimately involved that evening?

12 A. The only way to prove that was if there was more ejaculant
13 and they did not find more than one contributor other than
14 Charles Bortz at the time. And I still believe and I'll hold
15 firm to that belief that there was more than one person
16 involved in this incident.

17 Q. I'm simply asking you if you were aware, Ms. Jones --
18 because you actually did not answer my question -- if you were
19 aware and if you are aware that at the conclusion of the
20 investigation conducted by the State Department that there was
21 no scientific evidence that supported the theory that there was
22 more than one person intimately involved with you on the
23 evening of July 27?

24 A. No scientific, yes.

25 MR. McKINNEY: If we can put up Plaintiff 29 and 30,

11:57 1 the e-mails that were discussed. And if we could highlight
2 this upper portion here and then this upper portion here,
3 please.

4 Actually, wrong one.

11:58 5 Sharon, I need a -- let's put up -- beside the
6 one on the left, let's put up Joint 57 and see if we can --
7 Joint 56 and see what we get there.

8 Go to the prior page, please. Yes.

9 The highlighted portion, please, enlarge that
11:58 10 portion there and then the portion here on the left page.
11 Let's get them up where we can see both of them clearly.

12 BY MR. MCKINNEY:

13 Q. I believe you told our jury at some point that the time
14 difference here, "the girls hate me here," this e-mail, the
11:59 15 time difference, 10:53 p.m. on Wednesday, July the 27th and
16 7:43 a.m., July the 28th, did you tell us that the 10 -- the
17 7:43 entry was the product of tampering by Eric Iler?

18 A. I don't know who by; but if you look at "2005" and "7:43,"
19 the person that tampered with it forgot to put a space.

12:00 20 Q. Uh-huh. Well, can you tell our jury what the time
21 difference is between Baghdad and Houston?

22 A. It's nine hours. But these were intra-Iraq messages.

23 Q. And what is the time difference between 7:43 and 10:43?

24 A. Nine hours.

12:00 25 Q. So, you think that's just a coincidence?

12:00 1 A. I think the person probably knew what they were doing.

2 Q. Uh-huh. Now, is it your contention, Ms. Jones -- well,

3 first, you told us yesterday when I was asking you questions

4 that you don't remember ever writing the e-mail that says: The

12:01 5 girls hate me here?

6 A. I don't.

7 Q. So, if you don't remember writing it, you don't remember

8 when you wrote it, correct?

9 A. Exactly.

12:01 10 Q. But if you had written it at 10:43 p.m. on Wednesday

11 evening, the response that Mr. Arroyo gave you would have been

12 nine hours later the next morning, correct?

13 A. I don't know.

14 Q. You remember his response? We talked about it several

12:01 15 times yesterday.

16 A. Remember, I couldn't remember the first e-mails.

17 Q. All right. Now, if you had written this e-mail at

18 10:43 p.m., wouldn't you have had to have been at your office

19 or at least on your computer somewhere?

12:02 20 A. On the computer, yes.

21 Q. All right. Now, at 10:43 p.m. on Wednesday --

22 A. Uh-huh.

23 Q. You have to say "yes."

24 A. Yes.

12:02 25 Q. -- you weren't on your computer because you were at the

12:02

1 social gathering, correct?

2 A. Right. Right.

3 Q. So, you didn't write this e-mail at 10:43 p.m., did you?

4 A. I now don't have a clue when I wrote it, so --

12:02

5 Q. All right.

6 A. I don't remember it in the first place.

7 Q. So, is the fact that we have an exact nine-hour difference

8 in these two e-mails, from that fact alone, is it your sworn

9 testimony to our jury that the entire e-mail string that you

12:02

10 say you don't remember is a fraud and a forgery?

11 A. I can't say one way or the other because I don't remember.

12 Q. Now, Ms. Jones, I'm going to talk with you about the

13 specific allegations you've made against my client.

14 A. Okay.

12:03

15 Q. To review the bidding, your testimony is that you had two

16 sips from a drink that was given to you by Matt Ryan and you

17 have no recollection until you woke up the next morning and you

18 were alone in the top bunk of your bed, naked, and that's the

19 first thing you remember.

12:03

20 A. That's almost everything I've said but not quite.

21 Q. Well, the first thing you remember is waking up, correct?

22 A. I do remember that, yes.

23 Q. And you remember that you were in the top bunk of your bed?

24 A. Yes, because I was traumatized. The only way I can account

12:03

25 for the memory of that morning is that it was so traumatic to

12:04 1 me and I was hurting really badly. I don't understand it
2 either.

3 Q. And I'm not -- I'm simply asking if it's true that you woke
4 up in the top bunk of your bed --

12:04 5 A. Yes.

6 Q. -- that morning?

7 A. I did.

8 Q. And that's the first memory you have after taking the two
9 sips?

12:04 10 A. Yes.

11 Q. And is it also true that you were alone when you woke up in
12 the top bunk of your bed?

13 A. Yes.

14 Q. That's your testimony to this jury?

12:04 15 A. Yes.

16 MR. MCKINNEY: Have you redacted B232?

17 MR. KELLY: We need to approach, your Honor.

18 THE COURT: You need to approach?

19 *(At sidebar with all counsel)*

12:05 20 MR. KELLY: This is a hearsay document, your Honor.
21 It's written by --

22 MR. MCKINNEY: I can show the Court what I am talking
23 about. This is the letter that her therapist wrote to this
24 person. I'm redacting these two lines.

12:06 25 Ms. Jones herself sent a letter, a substantially

1 identical letter, five days later, sent it to Barbara Boxer.

2 And at the same time --

3 THE REPORTER: I can't hear, Judge.

4 MR. McKINNEY: On May the 17th of 2007, Ms. Jones'
5 therapist Dawn Nelson sent a letter to Dixie Morrow, Assistant
6 US Attorney. I am redacting "Assistant United States
7 Attorney," and I am redacting "Northern District of Florida."

8 I'm offering at this time only the front page of
9 B232. B232 is substantively identical to a letter signed by
10 Jamie Leigh Jones five days later --

11 THE COURT: Okay.

12 MR. McKINNEY: -- to Senator Boxer --

13 THE COURT: Okay. So, what does it go to?

14 MR. McKINNEY: It's directly impeaches her testimony
15 that she woke up alone in the top bunk of her bed. She says
16 that herself.

17 MR. KELLY: Even though she says it herself, it may be
18 a statement against interest, your Honor; but where someone
19 else says it on her behalf, it is hearsay.

20 MR. McKINNEY: It's the identical letter. It's the
21 same representation made twice. And plus, it's probative the
22 same identical letter goes out.

23 MS. VORPAHL: This isn't offered for the truth of the
24 matter asserted at all, the first one.

25 MR. McKINNEY: It's to impeach both --

1 THE COURT: Yeah, I'm going to allow it. I'm going to
2 allow it.

3 *(In open court)*

4 MR. McKINNEY: May it please the Court, at this time I
5 move for the admission of Page 1 of B32 as redacted.

6 THE COURT: Permission is granted over an objection.

7 MR. McKINNEY: Go down to the word "she" right here
8 and highlight that sentence.

9 BY MR. McKINNEY:

10 Q. This is a letter written by your therapist, Dawn Nelson.
11 Have you seen this letter before?

12 A. It's been years.

13 Q. In fact, you wrote this letter for your therapist and sent
14 it to her in an e-mail and asked her to send it to this person,
15 correct?

16 A. I don't think so, no.

17 Q. In any event, what your therapist --

18 A. I'm pretty sure not, but I'm not a hundred percent on that.

19 Q. In any event, what your therapist wrote, referring to you,
20 is: She woke up the next morning, battered, bruised, confused,
21 and in pain with a nude male lying beside her.

22 Your therapist made that statement, correct?

23 A. That's what she said.

24 Q. Now --

25 MR. McKINNEY: May I approach the witness?

12:09

1 THE COURT: You may.

2 BY MR. McKINNEY:

3 Q. I'm showing you, Ms. Jones, Joint Exhibit 157.

4 A. Okay.

12:09

5 Q. Do you recognize that?

6 A. Yes.

7 Q. Is that your signature?

8 A. This was through Beth Reichek, and I gave her my signature.
9 So, Beth Reichek wrote it.

12:09

10 Q. All right. Beth Reichek -- well, this is a letter to
11 Senator Barbara Boxer in California, correct?

12 A. Yes, but Beth Reichek wrote that. And she had my
13 signature, and you can tell it's a signature that is
14 electronic.

12:10

15 MR. McKINNEY: Let's put up the first page, please,
16 and -- well, Joint Exhibit 157 is already in, correct?

17 THE COURT: Is that correct, Ms. Loewe?

18 She says yes. Yes.

19 BY MR. McKINNEY:

12:10

20 Q. The top of the page --

21 MR. McKINNEY: Highlight the -- from the date down to
22 the first full sentence of the letter.

23 BY MR. McKINNEY:

24 Q. It's a letter dated May 22nd, 2007. It's to the Honorable
25 Barbara Boxer, United States Senator, California, the Russell

12:10

1 Building, Washington DC.

2 "Dear Senator Boxer," quote, "I am writing to you
3 as my senator, seeking your help."

4 That's what the letter says?

5 A. It's what it says, yes.

6 Q. And if we read this entire letter, it purports to be
7 written by you, correct?

8 A. It does. I agree.

9 MR. McKINNEY: If we drop down to the bottom of this
10 first full paragraph where it begins: On July 27th, 2005.

11 BY MR. McKINNEY:

12 Q. The letter reads: On July 27, 2005, after my work shift, I
13 was socializing with other employees and was given the date
14 rape drug. I woke the next morning, battered, bruised,
15 confused, and in pain with a nude male lying beside me.

16 Do you see that?

17 A. I see it.

18 Q. It purports to be a statement directly by you, correct?

19 A. It does.

20 Q. But you're telling our jury this is not a statement
21 directly by you?

22 A. It's any -- if I wrote it, I would have signed it in pen.
23 It's a digital signature. And one of my advocates, Beth
24 Reichel, she was very upset with what happened to me; and she
25 was writing senators and Congressmen on my behalf all over the

1 world, not just Senator Boxer.

2 Q. With your permission, I presume?

3 A. Yes.

4 Q. Because you gave her your signature?

5 A. Yes.

6 Q. And would you review her correspondence before it would go
7 out to make sure it was accurate?

8 A. I obviously did not read it carefully because I was lying
9 in the top bunk of the bed, but it's a long story. I was lying
10 in the top bunk of the bed and --

11 Q. Ms. Jones, with all due respect --

12 A. Okay.

13 Q. -- I believe the question is simply: Did you review this
14 letter for accuracy before it went out?

15 A. I didn't catch that when I reviewed it. I would have
16 changed it.

17 Q. All right. Several days ago when I initially examined you,
18 we went pretty much line by line through the report -- or the
19 portion of the report from the State Department where you were
20 being interviewed. Do you recall that?

21 A. Yes.

22 Q. And do you recall that we noted each instance in which you
23 consumed alcohol according to that report?

24 A. Yes.

25 Q. Beginning with Khalid?

1 A. Yes.

2 Q. And then the Baileys and then sipping from Bortz' drink?

3 MR. KELLY: Your Honor, this is beyond the scope of
4 redirect. We didn't talk anything about that report or her
5 drinking on redirect.

6 MR. McKINNEY: It ties --

7 THE COURT: Well, no, but it goes to credibility.

8 MR. McKINNEY: It also goes into my --

9 THE COURT: That's all I want in evidence. Let's
10 proceed.

11 BY MR. McKINNEY:

12 Q. In total, the State Department documented, and I believe
13 you agree that the State Department documented, that you
14 consumed alcohol from at least five different sources that
15 evening, correct?

16 I can numerate them. Khalid --

17 A. I disagree.

18 Q. Well, let's -- let me just make sure that we have it here.

19 Khalid, your Baileys, you sipped out of Bortz'
20 drink, you sipped out of Castillo's drink, and you got the
21 drink from Matt Ryan. Each of those separate sources of
22 alcohol was documented by the State Department the day of your
23 alleged rape -- or the day after your alleged rape, July the
24 28th; and you agree with that that the State Department, in
25 fact, did document that?

1 A. I've talked about all of this already. And I've always
2 said what I've said, that I took a drink -- I took a sip out of
3 a whiskey and I couldn't even swallow it. And the one that, I
4 guess, I sipped out of Bortz' drink was my own Baileys, which
5 was a third of the way full. And then the last drink that I
6 remember consuming was the one that I was handed and was told:
7 Don't worry, I saved all my ruffies for Dubai.

8 Q. But you would agree --

9 A. And I don't even know now about Castillo's drinks. I don't
10 remember that.

11 Q. Yes, ma'am. And I'm not asking you about your memory today
12 because we're now six years after the fact. I'm asking you
13 about what was documented by the State Department.

14 And you agree with me the State Department
15 documented five separate sources of alcohol in -- based on
16 their interview of you?

17 A. I agree. But I also noted some notes within the documents
18 themselves, like with one of the witnesses they said that they
19 interviewed him on the 24th. And that was, like, way before
20 the assault even happened. These are full of errors within the
21 records. So, I know for sure what happened. I was there.

22 Q. So, the State Department misunderstood you --

23 A. Possibly.

24 Q. -- when they wrote their report?

25 A. Because I know exactly -- this happened to me and --

1 Q. Does it seem to you, Ms. Jones --

2 THE COURT: Just a second. Let her finish.

3 Go ahead.

4 A. This was what happened to me. It was a very traumatic
5 event. I remember what I remember. And just -- because the
6 State Department is full of errors, even with dates and
7 everything. That's just the way it is.

8 BY MR. McKINNEY:

9 Q. Does it seem to you, Ms. Jones, that a lot of people have
10 misunderstood what you have said over the years about this
11 entire incident?

12 A. No.

13 Q. You remember in great detail -- let me back up.

14 Your contention is that you were drugged,
15 correct?

16 A. I know I was.

17 Q. And it's your position that over time the drug wore off and
18 you became more and more aware and your memory became better
19 and better. Is that correct?

20 A. Other than when I was faced initially with the trauma of
21 seeing Charles Bortz and knowing that he raped me and seeing
22 the bruises and feeling the pain between my legs and all of
23 that is pretty clear. And I think that that's because of the
24 trauma.

25 Q. Actually, you sort of anticipated my next question,

1 Ms. Jones. I'm not going to go to the chart and make a
2 timeline. But where your memory begins and ends and then
3 begins again -- tell me if I'm wrong, but I think it sort of
4 goes like this: According to you, you remember nothing between
5 having two sips of a drink and then waking up. You remember
6 the initial waking-up period very clearly, then your memory
7 ceases until about the time you and Pete Arroyo met around
8 10:30 or so in the morning.

9 Is that approximately the timeline of how your
10 memory functions in this case?

11 A. It was really foggy, though, still. I mean, when I
12 remember it, it's like remembering a fog. But --

13 Q. Well, help me here. The fog is when? When you hooked up
14 with Pete Arroyo?

15 A. It just -- it's foggy, even details of what happened. Like
16 today I can't remember if Charles Bortz was naked or not. And
17 I don't know if I remembered it back then; but, I mean, it's
18 all very, very foggy.

19 I also don't -- today I don't remember him even
20 walking me outside. Things are very, very foggy for me.

21 Q. Well, some things are and some things are not foggy, if I
22 understand your testimony, Ms. Jones, because, for example,
23 while you don't remember any of the e-mail traffic that
24 occurred that morning, you remember a number of distinct things
25 at the moment that you woke up and in the first five or ten

12:19

1 minutes. Let's review them.

2 You remember being in the top bunk, correct?

3 A. Yes.

4 Q. You remember being nude, correct?

12:19

5 A. Yes.

6 Q. You remember climbing down the ladder and putting on your
7 robe?

8 A. (Nodding head.)

9 Q. You remember those details even today and despite the fact
10 that you were drugged?

12:19

11 A. Yes.

12 Q. You remember walking to the bathroom?

13 A. Yes.

14 Q. You remember sitting on the toilet?

12:20

15 A. Yes.

16 Q. You even remember that you didn't line the toilet as was
17 your usual custom?

18 A. I do.

19 Q. You remember specifically pain between your legs?

12:20

20 A. Yes.

21 Q. And you remember blood and wiping and wiping again and
22 wiping again until the blood was gone?

23 A. Yes.

24 Q. You remember all of that, correct?

12:20

25 A. Yes. It was very traumatic for me.

12:20 1 Q. Well, on the subject of traumatically causing you to
2 remember things, isn't it also true that it's your testimony in
3 this case that when Jamie Armstrong said to you that a woman
4 had been raped and buried in Iraq, that was so traumatic for
12:20 5 you that you forgot it --

6 A. Yes.

7 Q. -- until a week ago when you had a conversation with
8 Ms. Chapman and you and your mother both had simultaneously
9 recovered memories? So, the trauma -- does it work both ways,
12:21 10 Ms. Jones?

11 A. I've been through a lot of desensitization training.

12 Q. The question is, Ms. Jones, does the trauma work both ways?

13 A. Partially it does.

14 Q. Does it cause you to remember some things and then forget
12:21 15 others and then remember them at a later time? Is that how the
16 trauma seems to effect you?

17 A. I remembered because someone told me all about it and it
18 recalled. You can have recall, yes. When someone tells you --
19 Congressman Poe's office remembers what I said to my father on
12:21 20 the phone because my father relayed that information. When I
21 was told again, it made a recall.

22 Q. The point, Ms. Jones, is how would you forget a statement
23 as startling as they raped a woman -- someone raped a woman and
24 she was buried in Iraq and you're saying that you failed to
12:21 25 remember that for almost six years because of the trauma of --

1 that you were experiencing while Ms. Armstrong was in the room?

2 And so, I'm simply asking you if the effect of
3 trauma on you appears to be that it causes you to remember some
4 things in great detail and forget other things that might seem
5 very memorable to some people? Is that how trauma affects you?

6 A. I don't know.

7 Q. Okay. To continue with the list of things that you
8 specifically recall while just having woken up and having been
9 drugged, you specifically recall washing your hands, seeing a
10 bruise on your wrist, passing out, returning to your room, your
11 legs feeling like jello; you recall knowing that you had been
12 raped before you ever re-entered your room. Do you remember
13 telling us that?

14 A. Yes. Those are memorable events. Some e-mails written on
15 the computer aren't so memorable.

16 Q. And then you remember Charles Bortz on the bottom bunk?

17 A. (Nodding head.)

18 Q. You remember fear and terror?

19 A. (Nodding head.)

20 Q. You specifically remember that Mr. Bortz did not hold a
21 mirror for you to assist you getting ready that morning?

22 A. (Nodding head.)

23 Q. You remember having your residual makeup on from the night
24 before, you remember how your hair was done, and you
25 specifically remembered in your direct examination that

1 Mr. Bortz did not walk you out for work, yet you gave a
2 statement to the contrary to Ms. Armstrong; but all those
3 things you say that you can remember with great clarity even
4 today, correct?

5 A. For various reasons. I mean, the residual makeup and the
6 hair up, I noticed that later on in the day. But being
7 traumatized and what happened to my body, I'll remember that
8 the rest of my life. I can't get rid of that, and that's why
9 we're here because I want it to stop happening. I don't

10 remember a few pointless e-mails. Those weren't memorable.

11 Q. Now, Ms. Jones, not remembering what happened between the
12 time you took the two sips and the time that you woke up makes
13 it difficult for me to ask you what you did and didn't do
14 during that time period because, of course, you don't know,
15 correct?

16 A. You can ask specific questions.

17 Q. Well, if you have no memory between the time that you took
18 the two sips and the time that you woke up, can you think of
19 any specific question that I could ask you that you would be
20 able to answer about that time period?

21 A. Only if I have a flashback, if I had a flashback.

22 Q. All right. Well, let's see if you have any flashbacks.

23 Do you believe that you were rendered
24 unconscious, or do you believe that you retained an outward
25 appearance of being conscious?

1 A. I don't know because I was drugged. The only flashback I
2 have is one where Charles Bortz is on top of me and Matthew
3 Ryan is watching.

4 Q. All right.

5 A. That's the only thing.

6 Q. Leaving the flashback behind, we know that you woke up in
7 the top bunk because you told us that now several times?

8 A. Right.

9 Q. And the way you get in the top bunk is you climb the
10 ladder, correct?

11 A. Or you're put up there.

12 Q. Or someone put you up there, yes. So, it's going to be one
13 or the other, would you agree, Ms. Jones?

14 A. Yes.

15 Q. Now, it might make sense, would you agree -- or let me ask
16 it this way.

17 Would it make sense to you, common, logical,
18 reasonable sense, that a man would rape you and then go through
19 the effort of putting you in the top bunk?

20 A. I've thought about this a lot, actually. And the only
21 thing I can think of is if there was two men and they were
22 trying to clean up the area, then maybe. Otherwise I don't
23 know. I was on a drug. I have no idea.

24 Q. All right. An alternative explanation would be that you
25 were able to climb the ladder and get in your own bed. That

1 would be an alternative explanation and a reasonable one for
2 you being in the top bunk, would it not?

3 A. Yes. I don't know what happened. I was drugged.

4 Q. Another thing that you don't know, Ms. Jones, because you
5 have no memory, is you don't know how you were behaving that
6 evening after you say you lost your memory. You don't know
7 whether you appeared perfectly sober, perfectly able to carry
8 on a conversation, perfectly able to appear to consent to have
9 sexual relations. You simply don't know, Ms. Jones, because
10 you have no memory. Isn't that true?

11 A. I was given a rape facilitation drug.

12 Q. Not the question Ms. Jones. Not the question.

13 You've accused my client of raping you, drugging
14 you and raping you, have you not?

15 A. Because he did.

16 Q. And you've done so even though you have no memory of the
17 actual interactions between Mr. Bortz and yourself?

18 A. Here's what I know --

19 Q. That's not the question, Ms. Jones.

20 A. Please, may I explain?

21 THE COURT: Let her answer.

22 A. I was given a drink. I don't remember anything until the
23 next morning except for a flashback to the point where I had to
24 ask my assailant if he had sex with me or not, and he confirmed
25 that he did. And then I had to ask him if there was a condom

12:28 1 used or not, and he said yes.

2 Now, if I had any control of my faculties that
3 night, wouldn't I have known these items? And then -- and my
4 breasts are disfigured. I have to have reconstructive surgery.
12:28 5 And I'm hurting severely between my legs, and I have bruises.
6 All of those indicate to me that this is not consensual
7 whatsoever.

8 BY MR. McKINNEY:

9 Q. Ms. Jones, each and every one of those instances, would you
12:29 10 agree with me, have been addressed with doctors and others and
11 will be addressed with doctors and others and we will find out
12 more about your breasts and when that began to become a problem
13 for you? We'll be talking to your doctors about that; and
14 we've already talked to Dr. Scott, have we not?

12:29 15 A. We already talked to Dr. Scott. We'll talk to doctors.

16 Q. All right. Now --

17 A. And my disfigurement was from the rape in Iraq, absolutely.

18 Q. Ms. Jones, we will pick that up with the physicians. But
19 in terms of what happened between that time period you took
12:29 20 your two sips and you woke up the next morning, you don't know
21 how you were acting, do you?

22 A. I was given a date rape drug. I have no memory.

23 Q. You have reviewed in detail the rape kit and the Department
24 of State investigation of your room as a crime scene, correct?

12:30 25 A. Long time ago.

12:30 1 Q. They found no torn clothing, no signs of violence, nothing
2 that would indicate that you were mistreated or mishandled in
3 any way in terms of the physical evidence in your room. Isn't
4 that true?

12:30 5 A. They found semen on the sheets. They found semen in my
6 panties. They found semen in various places.

7 Q. There's no doubt, Ms. Jones, that Ms. Bortz -- Mr. Bortz
8 and you had sex. That is not in dispute in this case. You
9 understand that?

12:30 10 A. Yes.

11 Q. My question to you, Ms. Jones, is, based upon your review
12 of the evidence -- and you have reviewed it extensively, that's
13 apparent from your answers.

14 Based upon your review of the evidence in this
12:31 15 case, you know that there was no evidence found whatsoever in
16 your room, of torn clothing, of items misplaced or displaced,
17 of the bed clothes being unduly scattered about the room,
18 nothing that would indicate signs of violence or that some sort
19 of altercation took place or that anything of that nature might
12:31 20 have happened. You know that there's absolutely no evidence of
21 that, correct, Ms. Jones? Isn't that so?

22 A. The story was told on my body, Mr. McKinney.

23 Q. Isn't that so, Ms. Jones?

24 THE COURT: He's asking you now just whether you have
12:31 25 any memory.

1 A. I don't know how the State Department found my room. For
2 all I know, the assailants cleaned up afterwards. I have no
3 clue.

4 THE COURT: You might look for a stopping point.

5 MR. McKINNEY: This is a fine time, your Honor.

6 THE COURT: Okay. Does 45 minutes remain enough time?
7 Would you rather have an hour?

8 Okay. Let's don't be over. We'll have an hour.
9 Okay. 1:30.

10 *(Jury not present)*

11 THE COURT: Okay. We have some pending issues here,
12 the State Department report and these letters about what
13 happened to the hard drive. So, we need to take those up, I
14 think.

15 It seems to me on the letters back and forth
16 between employees of Halliburton, there are two basic issues.
17 First is whether they're being offered for the truth of the
18 matter asserted or whether they're being offered simply for the
19 fact that Ms. Jones was informed where the hard drive was and
20 what was happening to it, which would be inconsistent with her
21 view that it might have been tampered with by KBR.

22 The other issue is -- I think it does come in as
23 a -- perhaps as a business record if -- if somebody from KBR
24 can come and authenticate it as such. As far as I know, it
25 hasn't been authenticated yet. But tell me where I'm wrong on

12:33 1 that.

2 MS. CATES: I don't think you're wrong, your Honor. I
3 think that Gabe Andino can testify about them or prove them up
4 as business records affidavit. But I think the three that
12:34 5 Jamie received, she can be questioned about them for -- just
6 for the sake of what she knew at the time, not --

7 THE COURT: But not for the truth of the matter?

8 MS. CATES: Exactly, just what was told to her.

9 MR. KELLY: Judge, if authentication is the only
12:34 10 issue, there's an agreement among counsel the documents --
11 among -- that are traded like this are authentic. I don't
12 believe that -- we're not going to stand on the authentication
13 issue.

14 THE COURT: Okay. Is there an objection or not?

12:34 15 MR. KELLY: Well, the objection was hearsay, your
16 Honor; but I think listening to the Court's analysis, you got
17 down to the point where the only reason you were going to
18 exclude it was because of authentication. And if that's the
19 only reason, then we're not going to stand on that because --

12:34 20 THE COURT: Okay. Okay.

21 MR. McKINNEY: I have a matter, Judge.

22 THE COURT: Can we finish with the State Department
23 record?

24 MR. McKINNEY: Oh, yes, of course. I'm sorry.

12:34 25 THE COURT: Have we taken care of all the hearsay on

1 hearsay and all that? I mean, I haven't -- I don't recall
2 seeing a -- anyway, where are we on that?

3 MS. CATES: Your Honor, if I could real quick, could I
4 just move for admission of KBR Exhibits 106 to 109, the e-mails
5 we just talked about?

6 THE COURT: Yeah, fine.

7 MS. VORPAHL: Do you want to look at them again?

8 MR. KELLY: No, I've seen them. I think we have a
9 copy of them.

10 THE COURT: Yeah, they're admitted. All right.

11 MR. KELLY: Over our hearsay objection, though, your
12 Honor.

13 THE COURT: Okay. Over your hearsay objection.

14 Okay. What else? State Department, or do
15 you-all not want that in anymore? I can't tell.

16 MR. MCKINNEY: I want it in.

17 MS. CULLEN: I want it in.

18 THE COURT: What do you -- I'm sorry. There's been a
19 lot of documents in this case. Do we have a copy of the State
20 Department redacted to take out hearsay?

21 MS. HOLCOMBE: No, your Honor, not to take out hearsay
22 because we believe still that the hearsay exception of 807 --
23 there's several exceptions, one, 801(d)(2)(A) for Ms. Jones'
24 statements to the State Department, which I think opposing
25 counsel would agree.

12:36 1 THE COURT: Those aren't hearsay at all.

2 MS. HOLCOMBE: Yes, your Honor. But as an exception,
3 the very heart of this case is what happened in Iraq. That is
4 a material fact.

12:36 5 THE COURT: Yes, I understand that.

6 MS. HOLCOMBE: Therefore, under 807, the State
7 Department's final report, not their draft but just their
8 final, is -- the hearsay within it are statements that are
9 being offered as evidence of a material fact that is highly
10 probative as to the very material issues for the jury.

11 THE COURT: And it is the best source.

12 MS. HOLCOMBE: Yes, it is the best source because they
13 are unbiased, they are not employees of KBR, they are people
14 that came in independent by the United States Government and,
15 therefore, it has an amazing amount of trustworthiness. And
16 under 807, the residual exception, it should come in.

17 Your Honor, it's no different -- in fact, it's
18 even stronger than the investigation done by Ms. Katz of all
19 these witnesses that we never got to bring into Court to test
20 their hearsay out-of-court statements that she was allowed to
21 testify about here in Court. This is even stronger because it
22 is a State Department's investigation.

23 THE COURT: I understand your argument.

24 MS. HOLCOMBE: Yes, your Honor.

12:37 25 MR. KELLY: However, it's the State Department's

12:37 1 questioning of KBR's own witnesses that is the hearsay that we
2 are objecting to. And again, your Honor, we've shown that the
3 witnesses themselves would be -- would certainly be the best
4 source of the evidence.

12:37 5 We've also shown, and we believe we can continue
6 to show, how the witnesses who were employed by KBR who are
7 friends of the defendant Charles Bortz and who have a number of
8 other reasons for being dishonest in this case, I think we can
9 show that that hearsay within hearsay should not come in for
12:37 10 those reasons. It's not reliable. And it's clearly -- as
11 counsel has just mentioned, it is being offered for the truth
12 of the matter asserted.

13 THE COURT: It's not the best source you're --

14 MR. KELLY: It's not the best source. The best source
12:37 15 is to bring those witnesses, some of whom have been deposed and
16 we're going to hear from but --

17 MS. MORRIS: The trustworthiness can be questionable
18 because you'll hear that Ms. Simco got a phone call from
19 Jamie's father around 12:00 o'clock and he indicated that Jamie
12:38 20 was saying that she had been raped. She immediately called
21 Charles Bortz to warn him, who then wasn't interviewed. And
22 neither one of these witnesses were interviewed until the next
23 day. So, they were all allowed to corroborate and talk to each
24 other all day before they actually spoke to the State
12:38 25 Department agent.

1 MS. HOLCOMBE: Your Honor, may I say something?

2 THE COURT: Yes, you may.

3 MS. HOLCOMBE: The problem is that -- one of the
4 problems is still the hearsay within hearsay should be taken
5 care of by 807. But that aside, the problem is that some of
6 these witnesses are not coming, they're unavailable and they're
7 coming by video deposition and opposing counsel knows that.
8 And the problem is that Ms. Jones has taken the stand, as just
9 one example, and has stated under oath that Mr. Arroyo did
10 not -- that Mr. Arroyo was the one, in fact, who told Ms. Rumba
11 what happened to her at the hospital, that it was not Ms. Jones
12 herself. We can't bring him in live to tell that, and the
13 State Department states very much to the contrary.

14 In fact, Mr. Arroyo's statement two days after
15 the alleged events, which is much closer in time than his
16 deposition which is years later, states that Ms. Jones told
17 Ms. Rumba what happened to her. Therefore, the trustworthiness
18 of this statement that was given to the Department of State,
19 who, again, is not a KBR person, is more trustworthy because of
20 the time and because -- than his deposition which was taken
21 within the last year, where he may state something to the
22 contrary.

23 Ms. Jones has now stated under oath something to
24 the contrary, and the Department of State record further
25 shows -- can show that as well.

12:39 1 MR. KELLY: Your Honor.

2 MR. McKINNEY: I need to weigh in at this point
3 because that's highly material to my client's case.

4 We didn't know and we -- we continue to find out
12:40 5 as Ms. Jones continues to answer questions. We didn't know
6 until her deposition was taken in April that she was going to
7 contend that Jamie -- that Kristen Rumba's history was, in
8 fact, not a history that Kristen Rumba took from Jamie Leigh
9 Jones. Pete Arroyo has long since been deposed. He's in
12:40 10 Florida. He's outside of subpoena range.

11 And another point I would like to make is, with
12 all due respect to everyone here and the reason why I called
13 for 98 to be admitted to be shown to the jury, I have an e-mail
14 from the Court dated Monday or Tuesday informing me that Bortz
12:40 15 admitted exhibits includes Exhibit 98, which is the State
16 Department --

17 MR. KELLY: Is that what we're arguing about here?

18 MR. McKINNEY: Yes.

19 MR. KELLY: Well, there's -- okay. But I think that
12:41 20 is an error because my memory is as the Court's memory, which
21 is that the redacted -- or the hearsay within hearsay was not
22 coming in. And I think what's really critical -- your Honor,
23 we can't cross-examine this document; but what we did do is
24 cross-examine Mr. Arroyo. And I think it's a disingenuous
12:41 25 statement to say we had no idea that there was going to be a

1 challenge to what Ms. Rumba's memory was.

2 We asked Ms. Rumba in her deposition. We asked
3 Pete Arroyo in his deposition. Both of them said, "You know
4 what? Now that you're asking me those questions, it's very
5 possible." Pete Arroyo made the statement.

6 MR. HEDGES: Not what he testified.

7 MR. KELLY: And in fact -- I'm paraphrasing, of
8 course, but --

9 MR. HEDGES: Not even close.

10 MR. KELLY: -- that is exactly what they say if you
11 read the transcript. It took some cross-examination, it took
12 some getting there. I don't have the benefit of being able to
13 cross-examine these documents, your Honor. But it is very
14 clear when you read the transcript of both Pete Arroyo and
15 Kristen Rumba's deposition, it is very clear that they backed
16 off and said, "You know what? That may be, in fact, the way it
17 happened."

18 Additionally, to say even -- on top of everything
19 else, to say that the State Department in this case is
20 completely unbiased is also a little disingenuous when you
21 consider that they are the client of one of the parties in this
22 case. They are working hand in hand, side by side. The agents
23 work side by side with the people at KBR every day over there.
24 So, to say that these are completely unbiased and -- and,
25 therefore, ultrareliable investigations is really not

1 applicable in this case, your Honor.

2 MR. McKINNEY: Excuse me. At the time this
3 investigation was conducted, there was no reason whatsoever to
4 believe that KBR or the State Department or anyone but Charles
5 Bortz had any kind of potential problem. Ms. Jones had not
6 articulated any thought or concept of asserting a claim against
7 KBR. There was nothing about and remains nothing about this
8 investigation to indicate that KBR was the target of this
9 investigation. And to imply that people who were nothing other
10 than fact witnesses at the time were somehow shaping their
11 testimony in anticipation of this lawsuit six years later is
12 simply ridiculous. And again --

13 MR. KELLY: It's not only --

14 MR. McKINNEY: I'm not finished yet.

15 And to go back to the Court's earlier ruling on
16 Exhibit 98, the only thing the Court ruled that had to be
17 redacted at the time it was admitted, as I'm recalling and
18 there's a record around here that should show this, was
19 references to the grand jury proceedings. The balance of the
20 report, as I recall -- and the record, I think, will bear me
21 out on this -- was admitted, including the alleged hearsay
22 within hearsay, because that is exactly what reports do, what
23 investigations do; they go out and they take statements from
24 witnesses. Those are observations made in the course of an
25 investigation, and they come in under the Federal Rules of

1 evidence. And I'm sure Ms. Holcombe knows the exact number.

2 MR. KELLY: With all due respect --

3 THE COURT: No. Mrs. Loewe, who keeps very good
4 account, says we did admit it through error on Monday and it
5 was then -- then it was -- that decision was revoked on
6 Tuesday. So, it's not in right now.

7 Let me have a word with my colleagues. I'll come
8 right back.

9 *(Discussion off the record)*

10 THE COURT: Yeah. Mrs. Loewe has given me the
11 "admitted" entry of June 21.

12 Okay. We did err on June 20th. The Exhibit 98
13 had been talked about but not admitted, and we mistakenly
14 listed it as admitted. That was fixed the very next day, the
15 morning of the 21st.

16 MR. MCKINNEY: I missed that.

17 THE COURT: The issue of trustworthiness is a factor
18 that goes to the entire report; that is, as an 803(8)
19 component. It has to be shown that the factual findings do not
20 and the circumstances surrounding it do not indicate a lack of
21 trustworthiness. So, there's not, though, in the Federal Rules
22 or anywhere else an all-purposes exception for hearsay. The
23 report comes in because of 803(8), but the individual
24 statements that are hearsay have to come in on their own.

25 Ms. Jones' would necessarily come in because

12:49 1 they're not hearsay at all, they're an admission by party
2 opponent. But hearsay by others does not come in because of
3 803(8). And what should have been done -- and maybe it was
4 done -- was to have asked these individual -- these individuals
12:49 5 in their depositions whether they could confirm the statements
6 made that appear as hearsay in the report.

7 So, I'm not going to be able to let the whole
8 report in until the hearsay has been deleted or somebody has
9 convinced me that there's not hearsay or it would fit within
12:49 10 one of the exceptions.

11 MR. MCKINNEY: Judge, may I point out that the State
12 Department report -- there's nothing about the State Department
13 report that has any indicia of lack of trustworthiness.

14 THE COURT: I know. And that's why the report comes
12:50 15 in, but that does not carry the day for the hearsay.

16 MR. MCKINNEY: I want to take the next step, though,
17 to follow up on what Ms. Holcombe was stating to the Court.

18 The defense has, with the exclusion of this
19 report, if it's excluded, particularly the witness statements
12:50 20 contained in the report, which we think are observations made
21 pursuant to law, the defense has been prejudiced significantly
22 by the extended, over objection, testimony of Amy Katz and her
23 so-called investigation that was rife with hearsay, talking to
24 KBR people and non-KBR people alike.

12:50 25 She's not an official investigator. She was not

1 doing anything pursuant to a legal duty or if she was, it was
2 only minimally so and only based upon her, the agent,
3 conferring authority on herself, which as a matter of agency
4 law, the agent cannot do. And yet -- and yet, having offered
5 precisely that class of evidence voluminously, the plaintiffs
6 are now arguing that an entirely ordinary, regular, done in the
7 ordinary course of business type report that speaks to the
8 heart of the matters before the Court is inadmissible because
9 it contains hearsay. That is sauce for the goose but not for
10 the gander. And with all due respect, Judge, it is simply not
11 fair for the plaintiffs to be allowed to take both positions
12 entirely inconsistent with one another in this Court on these
13 matters that go to the heart of this case.

14 THE COURT: Do you wish to respond?

15 MS. MORRIS: Your Honor, Mr. McKinney fails to
16 acknowledge that Ms. Katz was a KBR employee when she was doing
17 her investigation and when she generated her report based upon
18 her investigation. Plus, as I recall, Ms. Katz was not allowed
19 to testify about specific statements made to her because that
20 was hearsay.

21 MR. KELLY: It was also not offered in that case for
22 the truth of the matter asserted, but it was offered to
23 provide -- to show that KBR had notice prior to committing the
24 fraud upon Ms. Jones. In this case, as has been very
25 eloquently stated by Ms. Holcombe, they're offering it exactly

12:52 1 for the truth of the matter asserted here. In Ms. Katz' case,
2 it wasn't even hearsay, your Honor, because we were offering it
3 to show notice, not to show its truthfulness.

4 MS. HOLCOMBE: Your Honor, may I just add, for
12:52 5 purposes of creating a clean record for us, that for the
6 hearsay statements that are within the document of the
7 Department of State, that because this goes to the very heart
8 of this case and the elements that are necessary for the jury
9 to consider, that we again reurge that under 807 this would be
12:53 10 the exception your Honor is looking for to allow these types of
11 statements in.

12 And the reason -- the only reason I bring up
13 trustworthiness, your Honor, is that separate and apart from
14 the trustworthiness found under 803(8), it's the fact that
12:53 15 under 807, when it is more probative and that it goes to the
16 very heart as to what actually happened, which Ms. Jones does
17 not remember for most of it, and it helps that and it helps the
18 jury understand --

19 THE COURT: I know, but why wasn't the better -- why
12:53 20 wasn't it a better option to just have deposed the individuals
21 involved?

22 MR. McKINNEY: And, Judge, we could have deposed every
23 individual in that report from the dawn of time until the end
24 of time; and that is not going to prevent the pop-up voluntary
12:53 25 interpretations of evidence and voluntary injections of hearsay

12:53 1 that we get repeatedly from Ms. Jones in response to direct
2 questions.

3 But let me go back to Ms. Morris' statement that
4 somehow the fact that Amy Katz, as a KBR employee, makes it
12:54 5 fair for all of her extended, unrecorded, remembered six years,
6 ten years after the fact or 12 years after the fact
7 investigation to come in, why it's fair for that to come in but
8 not fair for an investigation conducted by trained
9 professionals to come in.

12:54 10 Ms. Katz was an HR employee for nine months by
11 her own testimony. She was clearly biased in favor of
12 Ms. Jones and against KBR. That is not an indicia of
13 trustworthiness. That's an indicia of untrustworthiness. That
14 is a negative factor in evaluating the credibility of a
12:54 15 witness' testimony. Ms. Katz came in, offered by the
16 plaintiffs, on the same grounds -- and we have a better
17 argument, we have a better document. We're offering the State
18 Department investigation on the same grounds that the
19 plaintiffs offer Ms. Katz in. Sauce for the goose, sauce for
12:55 20 the garden.

21 THE COURT: No, no, no. You're incorrect about that.
22 Ms. Katz came in under a different exception, the 803(6).

23 MR. McKINNEY: She discussed her discussion with the
24 Army captain. In no way -- and she was allowed to over
12:55 25 objection. In no way was that an admission of a party

12:55 1 opponent. She was allowed to discuss her so-called
2 investigations and discussions with alleged victims of sexual
3 harassment. None of that was an admission of a party opponent.

4 That is fact finding in the field. The Court let
12:55 5 it come in. It is substantively identical to witness
6 statements taken by a trained investigator of the Department of
7 State. With all due respect, your Honor, we're on all fours on
8 this.

9 THE COURT: It came in under different exceptions.
12:55 10 And however -- whatever the tenure of Ms. Katz with KBR, she --
11 she was an employee and she did -- she made a record that was
12 consistent with what her office does, investigating human
13 relations issues. I'm still -- the report -- the State
14 Department report comes in, the conclusion comes in. I'm
12:56 15 entirely on board with that. It's just the individual
16 statements that are hearsay that should have been confirmed by
17 deposition.

18 MS. HOLCOMBE: Your Honor, just for the record, are
19 you saying that rule -- exception to the rule of Hearsay 807 is
12:56 20 not applicable in your eyes? I just want to be -- because --

21 THE COURT: I am, because it's not the most
22 trustworthy -- it has to be offered as evidence of a material
23 fact. The statement's more probative on the point for which it
24 is offered than any other evidence. I think it fails at that
12:56 25 at the step. I think the more probative would have been to go

12:56 1 talk to them in a deposition.

2 MR. MCKINNEY: Judge, yet another in -- I apologize
3 for sounding like a broken record. If we were to take
4 Ms. Jones' answers to questions on both direct and
12:57 5 cross-examination, we will see that she has persistently
6 injected hearsay into this record in argumentative and
7 contentious responses to direct questions. Most of her
8 injected hearsay, substantial portions of it for sure, are
9 directly rebutted by the witness statements taken by the
12:57 10 trained investigators of the Department of State.

11 And so, in line with the same equity argument
12 that we are making comparing the Katz testimony with the
13 Department of State, it is just not fair, with all due respect,
14 just not fair for the record to be replete with Ms. Jones'
12:58 15 voluntarily injected self-buttressing, self-promoting hearsay
16 and we cannot put in the evidence that was actually taken from
17 witnesses at or near the time. It's just not fair.

18 MS. HOLCOMBE: Can I add just one last thing? And
19 it's just for a factual thing. I'm sorry, your Honor.

12:58 20 THE COURT: That's okay.

21 MS. HOLCOMBE: Because of your statement as to whether
22 we could depose them, if you -- this report is like 30 pages
23 long, filled with different people who had a firsthand account
24 as to what happened. We noticed -- it's my understanding that
12:58 25 we noticed every single person that we could to get their

1 deposition. Some of these people we could not find. Some of
2 these people work for the Department of State. And we had to
3 work through Daniel Hu to try to find people, and we can't find
4 them. Some of these people are just completely off the grid.

5 And some of these statements Ms. Jones has
6 alluded to on the stand, including things that Ms. Heidi
7 McMichael has said to her, that is not in this report that the
8 jury is going to take as true now --

9 MR. McKINNEY: Or could take.

10 MS. HOLCOMBE: Or could take as true without having
11 the rest of the story before them. And we can't bring
12 Ms. McMichael in here.

13 THE COURT: If you can't find people, if you don't
14 know who they are, if they're off the grid, that is exactly the
15 kind of people whose statements ought to be excluded by the
16 hearsay rules. I mean, that's just classically -- statements
17 that are uncorroborated and all we have is the fact it was
18 included in some report. You know, that's one reason I don't
19 let Internet comments in. I don't know who these people are,
20 who's making these comments; and I don't know who these people
21 are in the report. I'm sorry. I mean --

22 MR. KELLY: Based upon that, your Honor, could we get
23 a curative instruction with the jury based upon the questions
24 that were asked about this -- on this exhibit with respect to
25 the drinking, because it seemed to have come from multiple

12:59 1 different people.

2 THE COURT: See, then I've got to go back to what each
3 individual statement was.

4 MR. McKINNEY: That came from her direct statement.

12:59 5 MS. HOLCOMBE: That was her direct --

6 MR. McKINNEY: That was her direct statement.

7 MR. KELLY: Was that her direct -- that's all you
8 asked.

9 MR. McKINNEY: Yes.

01:00 10 MR. KELLY: That's fine.

11 MS. HOLCOMBE: It's in evidence.

12 MR. ESTEFAN: We don't need it.

13 THE COURT: I'm sorry. These are hard questions, but
14 I can't overrule the Rules of Evidence and say I'm just going
01:00 15 to do a freeform balancing.

16 I do think -- and I've -- I haven't wanted to
17 correct her on the stand because I think that really undermines
18 a witness' credibility. But I do think you might have a
19 bedside talk with her about responding directly to the
01:00 20 question, not answering more than the question, and not
21 including statements by other people that were made out of
22 court. I do really hate to slice her credibility by always
23 interjecting, "Answer the question, answer only the question";
24 but I think you can do that off the record.

01:00 25 MR. KELLY: We will do that, your Honor.

01:00 1 MR. MCKINNEY: The problem is we're virtually through
2 examining her as a witness, Judge; and the horse has left the
3 barn there. We have made a number of objections regarding
4 responsiveness and we tried to stop the answer and we have not
01:01 5 been successful in that. And I come back to the fact that it's
6 just -- she has herself, in many, many of her non-responsive
7 and contentious responses, alluded to the contents of the State
8 Department investigation.

9 THE COURT: That's a wholly new argument. You're
01:01 10 arguing waiver now.

11 MR. MCKINNEY: Well, waiver -- I mean, yes. She
12 talked about how there were errors in the State Department
13 record and dates wrong and you couldn't believe this and you
14 couldn't believe that. That was in her last line of testimony.

01:01 15 MR. KELLY: That was in direct response to the
16 questions about the State Department investigation, your Honor,
17 that he was asking.

18 MS. HOLCOMBE: Respectfully, no, your Honor. There
19 are other statements when she would just -- when Mr. McKinney
01:01 20 would be silent and he would be looking at his next question,
21 and Ms. Jones, on her own account, wanted to talk.

22 And, for example, one of them was about
23 Ms. McMichael and how Ms. McMichael told her: Yes, Congressman
24 Poe did call us. We're the ones that you came and sent you --
01:01 25 sorry -- we're the ones that came because Mr. Poe called for us

01:02 1 to come.

2 Ms. McMichael has never stated that in a State
3 Department record. In fact, there is nothing in there; and we
4 can't now cross Ms. Jones on that or to even let the jury know.

01:02 5 THE COURT: To the extent that she made a reference of
6 what Ms. McMichael said and to the extent that Ms. Michael was
7 quoted in the report, I think that is an instance of where it
8 could come in.

9 MR. McKINNEY: Let me point out another one, Judge.
01:02 10 Okay. I'm quizzing her, I was asking her just before the break
11 about: Isn't it true that, based on the State Department
12 interview of you, you identified five sources of alcohol?

13 And she goes off on a tangent about how there's
14 errors in some other part of the State Department record and
01:02 15 there's errors in some other part of the State Department
16 record and it's just not a good record and it's not honest and
17 blah, blah, blah. That is all self-buttressing, voluntary
18 testimony injecting the State Department record into the
19 evidence.

01:02 20 THE COURT: Any time Ms. Jones has made a
21 conversational detour and injected aspects of the State
22 Department report, then other aspects of the State Department
23 report can be introduced under a different theory than you've
24 come at me with thus far. That's a waiver theory.

01:03 25 MR. McKINNEY: But the fact that she has -- when she

01:03 1 makes a derogatory statement about the report, she doesn't say
2 "Page 6, Line 14, is in error," so that that allows us to put
3 Page 6, Line 14, into evidence. She just makes these blanket
4 statements that actually have no identifiable relationship to
01:03 5 the report. And the only way to respond to it is just to put
6 the report in evidence and let the jury decide whether
7 Ms. Jones is, in fact, making stuff up about the report or
8 whether the report, in fact, accurately reflects an
9 investigation.

01:03 10 MR. KELLY: That actually mischaracterizes what
11 happened, for one thing, your Honor. What happened was that
12 Mr. McKinney was questioning Ms. Jones about the five drinks
13 and when she said that she hadn't had five drinks, he said:
14 Well, so this report is inaccurate?

01:04 15 And she said: Yes, it is inaccurate. And
16 pointed out a few places, for instance, an interview, which
17 purportedly happened three days before the assault, about the
18 assault.

19 And so, she simply said: Look, it's clearly
01:04 20 inaccurate, at least in some respects.

21 And I think that she ought to be able to say --
22 in response to, "Are you saying now that this report is
23 inaccurate, she ought to be able to say: Yes, it is; and
24 here's the places where it is.

01:04 25 MR. ESTEFAN: To use Mr. McKinney's fairness argument,

01:04 1 it's not fair to set her up and then when she answers the
2 question, say, "Well, now she's opened the door, Judge. It was
3 his question on a document that this Court had not admitted.

01:04 4 MR. MCKINNEY: Actually, wrong on every account. I
5 was examining her on her specific statement to the State
6 Department, which is in evidence, and I was going to impeach
7 her with her deposition testimony where she clearly
8 acknowledged that the State Department report regarding her
9 statements identified five separate sources of alcohol. And
01:05 10 she went off on one of her typical tangents and said: No, they
11 had a date wrong over here and this was wrong over there.

12 But that's one example, Judge. I mean, so much
13 has happened in this trial, I can't remember everything
14 Ms. Jones has said. But I think the Court probably has a
01:05 15 general recollection of her going off on tangents and injecting
16 data into the case that is either non-falsifiable or is
17 directly rebutted by, for example, the State Department report.

18 And we think for all of the reasons we've
19 previously stated, plus her voluntary conduct -- and I'm not
01:05 20 meaning to cast aspersions on counsel, but she's been answering
21 non-responsively from day one in this courtroom. And a lawyer
22 can choose to caution his client early on and say: Look,
23 appreciate your effort, love you to death; but you need to
24 focus on the question and just answer the question that's being
01:06 25 asked. Or the lawyer cannot do that. Or the lawyer can give

01:06 1 the instruction and the client doesn't follow it.

2 I can't read these minds. I don't know what's
3 happened here; but for whatever reason, Ms. Jones has,
4 throughout this trial, injected tons of hearsay,
01:06 5 non-falsifiable, out-of-Court activities that no one can fact
6 check.

7 MS. HOLCOMBE: After she knows that that person is not
8 coming in to testify -- Ms. Chapman is not allowed to testify
9 pursuant to your Court's ruling -- and then all of a sudden,
01:06 10 Ms. Chapman is the only person who can come in here and state
11 about this buried thing. I mean, she just comes up with these
12 things once that person can't come here to test the
13 credibility. We have a report --

14 MR. KELLY: Withdraw your objection, she'll be here.

01:06 15 MS. HOLCOMBE: No. We have a report that we can use
16 to test the credibility of the statements that she's made and
17 the events that she says take place.

18 THE COURT: What you're assuming is that the State
19 Department report is correct.

01:07 20 MR. KELLY: Exactly.

21 THE COURT: And that's the thing I can't get my arms
22 around. It may be correct. I mean, would anybody here take
23 the position that government reports are never in error? Have
24 you ever dealt with the IRS? Have you -- I mean, have you ever
01:07 25 seen other investigations? I'm always reading reports that --

01:07 1 from the government, state, local, federal, that are wrong.

2 MS. HOLCOMBE: Then I'm going to the weight and not
3 the admissibility for the jury to determine who's more
4 credible, the Department of State and their findings and the
01:07 5 interviews they took place when they were there two days, even
6 a day sometimes, after what happened; or Ms. Jones, who has had
7 multiple stories on the stand and multiple statements.

8 THE COURT: You have brought out very effectively that
9 she's told multiple stories. You've brought out the -- at
01:07 10 least oddity of her memory working for certain periods in great
11 detail and other periods not at all. You've said in front of
12 the jury she's not being responsive. You've said that her
13 testimony about a lot of things could not be trusted. All
14 that's been put before the jury. You've done that.

01:08 15 And you're saying, you know: She went off
16 tangent; she didn't stick to the testimony.

17 We haven't heard from your witnesses. I don't
18 know what Bortz is going to do. He may do the very same thing.
19 I mean --

01:08 20 MR. MCKINNEY: He better not.

21 MR. ESTEFAN: We'll coach him up tonight, Judge.

22 MR. MCKINNEY: He better just answer the question and
23 give any appropriate additional explanation that is responsive
24 to the question or -- and if he's not, the Court is free to
01:08 25 instruct him to answer responsively. I expect all of my

01:08 1 witnesses and all of my clients to come into court and answer
2 responsively.

3 THE COURT: I just do not think that Mr. Kelly or
4 Mr. Estefan or Ms. Morris have coached Ms. Jones to not be
01:09 5 responsive.

6 MR. MCKINNEY: I don't think they have either, Judge.
7 And I'm not casting aspersions. But what seems reasonably
8 inferrable is that we've all sat in the same courtroom
9 together, we have all watched Ms. Jones answer consistently,
01:09 10 from the minute she got on the stand until the minute we took
11 our break, not responsively. And whether she's been counseled
12 to be responsive and simply isn't following counsel's
13 instructions or whether counsel are satisfied to let it go or
14 whether -- regardless of what the reason is, all of this
01:09 15 information has come into evidence.

16 THE COURT: Let me say this, you know, I've done more
17 than 250 of these. In most cases there is an issue about a
18 witness not being fully responsive. My attempts to get
19 witnesses to be more responsive are about like my attempts to
01:10 20 get you guys to slow down in your arguments. They're not very
21 effective. But don't you think the jury sees that? That's why
22 we have a jury. They see a nonresponsive witness.

23 The reason I don't interfere more heavy handily
24 is I think that's exactly the kind of information that goes to
01:10 25 the jury and let's the jury pierce to the guts of the case. A

01:10 1 juror may not understand fully all the Rules of Evidence. But
2 everyone who is a sensate human being understands when a
3 question is being avoided and when a question is being answered
4 non responsively.

01:10 5 I mean, have you ever talked with kids when
6 they've just gotten in the cookie jar? I mean, parents get all
7 the smoke and mirrors about what happened to the missing
8 cookies. They see. They know what's going on. They know
9 exactly what's going on.

01:10 10 MR. MCKINNEY: And, Judge, I agree that a persistently
11 nonresponsive witness can be problematic to the witness' own
12 credibility, particularly when it's a party. I agree that the
13 jury well may have made up their minds about Ms. Jones'
14 credibility based on her nonresponsiveness and perhaps on other
01:11 15 things as well. But unfortunately, we're at the point in the
16 trial where the jury hasn't been able to tell us what they
17 think.

18 And as advocates for our clients, particularly me
19 as an advocate for a man who, in my opinion, has been falsely
01:11 20 accused of rape nationally, I can't assume or hope or pray that
21 the jury gets it. It's my job, as an advocate for Charles
22 Bortz, to get every item of credible, honest evidence before
23 this jury, including the State Department report that
24 contemporaneously records what everybody said Ms. Jones and
01:11 25 Mr. Bortz were doing that night, get that in front of the jury

01:12 1 and let the jury decide based on the written document, not her
2 version of what that written document says. It's fair, and
3 it's right.

4 THE COURT: Mr. McKinney, I understand you're doing
01:12 5 your job. I understand beyond that that you're doing it
6 exceptionally well. I have a job, too. And it is not within
7 my province to assume a free-ranging portfolio to rewrite laws
8 or modify rules.

9 On this one -- I've agreed with you many times.
01:12 10 On this one, I think I disagree with you. I'm receptive to
11 additional evidence. I'm certainly receptive to specific
12 points that can be -- as to which Ms. Jones can be impeached on
13 the State Department report, if she has brought it in herself
14 non-responsively. It will take a lot of time, but we'll take
01:12 15 it one at a time.

16 And I just don't believe I have in the Rules of
17 Evidence anything that allows me to say hearsay upon hearsay,
18 even if contained in a government report, is nonetheless okay.

19 I think we're repeating ourselves now. I can't
01:13 20 do any better.

21 *(Recess taken from 1:13 p.m. to 1:49 p.m.)*

22 *(Jury not present)*

23 THE COURT: Okay. What do we have?

24 MR. MCKINNEY: I don't have anything, Judge. We're
01:49 25 ready to go.

01:49

1

Do you have something?

2

MR. KELLY: Yeah, we do. Probably best to do it before the jury comes back in.

4

THE COURT: Okay.

01:49

5

MR. KELLY: The next witness that KBR intends to call, your Honor --

6

7

THE COURT: It's one of your witnesses, then. Okay.

8

MS. CATES: Yes.

9

01:49

10

MR. KELLY: She's being called out of order because she's traveling or whatever. But her name is Kimberly Nichols. And we have a few documents on her that would appear to be all of her testimony very similar to Bob Weatherford, which was excluded by the Court. It is hearsay. And she's going to talk about her, you know --

11

12

13

14

01:50

15

THE COURT: What's the nature of her testimony?

16

17

MR. KELLY: I don't know exactly, other than it's hearsay.

18

19

01:50

20

MS. CATES: I'll tell you. She's going to testify about being in HR at Camp Hope. She was -- helped with the traveling arrangements, and she booked the tickets and stuff for Ms. Jones to come home. She lived in the barracks that Ms. Jones lived in, the exact same room. She moved out in June.

21

22

23

24

01:50

25

THE COURT: Exact same building. Surely, not the same room.

01:50

1 MS. CATES: Same room.

2 MR. HEDGES: Before.

3 THE COURT: Oh, I see. Okay.

01:50

4 MR. HEDGES: The same room, Number 201, in the
5 barracks. She motived out in June. Jamie moved in in July.
6 So she can testify about the barracks.

7 THE COURT: She can talk about things she saw with her
8 own eyes?

01:50

9 MS. CATES: I don't plan to ask her anything that she
10 didn't see or experience.

11 THE COURT: That's been the rule.

12 MR. KELLY: I understand, your Honor. If I could
13 remind the Court, however, that Bob Weatherford was excluded.
14 His testimony was pretty similar.

01:51

15 THE COURT: No. He was saying what he had heard and
16 what he --

17 MR. KELLY: On the last paragraph of Page 2 of his
18 affidavit -- which we don't, of course, have from this
19 witness -- but: "A day or two after the assault, I was
20 approached by the director of logistics James Morgan and" --

01:51

21 THE COURT: Slowly, slowly. Director of logistics,
22 James Morgan.

23 MR. KELLY: -- "and told to arrange for an up-armored
24 SUV to be added to the BIAP heavy convoy mission to facilitate
25 the transportation of Ms. Jones to the Baghdad transportation

01:51

01:51 1 center."

2 It goes on, but you get my point. It's very
3 similar. This witness apparently had something --

01:51 4 THE COURT: Number one, that statement is hearsay,
5 what he heard from somebody else.

6 MR. KELLY: He was being directed from -- by somebody
7 else, your Honor. It was actually -- that was actually a
8 verbal act. He was being directed to make transportation --

01:51 9 THE COURT: Goes to the truth of the matter asserted.
10 If he tries to put anything -- if this witness tries anything
11 like that, it's also going to be excluded.

12 MS. CATES: I understand that, your Honor.

13 THE COURT: Okay. Let's go.

14 (*Jury present*)

01:53 15 THE COURT: Members of the jury, please be seated.

16 Mr. McKinney, you may resume your inquiry.

17 BY MR. MCKINNEY:

18 Q. Ms. Jones, I have just one more document I would like to
19 discuss with you.

01:53 20 A. All right.

21 Q. That will be Bortz Exhibit 182, which I think you recognize
22 as Dr. Scott's medical record of your visit to her office on
23 May the 19th of 2003.

24 A. All right.

01:53 25 Q. You've seen that record before?

01:53

1 A. Yes.

2 Q. And you and I have discussed that record before?

3 A. Yes.

4 Q. And you discussed it with your attorney in front of our

01:54

5 jury, I believe it was yesterday. Is that correct?

6 A. Yes.

7 Q. And you had the benefit of hearing Dr. Scott's testimony

8 this morning about the May 19th visit?

9 A. Yes.

01:54

10 Q. What Dr. Scott noted in her record, which is now up before
11 you --

12 A. Uh-huh.

13 Q. -- that: "Patient" -- that would be you?

14 A. Right.

01:54

15 Q. -- "reports possible sexual intercourse with new partner
16 after she had several drinks and passed out. Does not remember
17 anything."

18 That's what the doctor wrote down at the time?

19 A. Right.

01:54

20 Q. And you heard the doctor say that she remembered that
21 visit, and she remembers pretty clearly that you said you
22 simply couldn't remember whether you had had sex or not. You
23 had had some drinks and passed out and you just didn't know.
24 You heard the doctor's testimony.

01:55

25 A. Right.

01:55 1 Q. All right. Now, you have an explanation for this record,
2 do you not?

3 A. Yes. That I was embarrassed.

4 Q. I'll ask you about the detail of that explanation in just a
01:55 5 minute.

6 A. Okay.

7 Q. Can you tell us the name of the new partner that night?

8 A. His name is Scott.

9 Q. Scott?

01:55 10 THE COURT: I don't think we need -- I really don't
11 think we need to go there. This man is not here to represent
12 himself.

13 MR. MCKINNEY: Fair point, your Honor. My apologies.

14 BY MR. MCKINNEY:

01:55 15 Q. I believe your explanation is that you were embarrassed,
16 having something to do with the two of you having your
17 underwear on, and he penetrated you in some form or fashion
18 through his underwear.

19 A. Yeah. I felt stupid.

01:56 20 Q. And so, why would you even mention -- let me back up.

21 You brought the subject up with the doctor -- let
22 me ask you this.

23 Did the doctor accurately write down what you
24 told the doctor at the time?

01:56 25 A. Probably. I felt stupid and didn't want to say the whole

01:56 1 thing.

2 Q. Okay. So, you think it's probable that the doctor -- that
3 you told doctor and the doctor accurately wrote down that,

4 after having several drinks, you passed out and you don't

01:56 5 remember anything and you don't know whether you had sexual

6 intercourse. You think it's probable that the doctor -- that's

7 actually what you told the doctor?

8 A. I don't know what exact words I said, but --

9 Q. Well, if the doctor wrote it down, you think it's likely

01:56 10 that that's probably what you told her, or pretty close to it?

11 A. Maybe. But I felt stupid; so, I didn't go into all the

12 details.

13 Q. Okay. Well, let's just -- leaving aside not feeling very

14 good about it, what would you accomplish, what was the purpose

01:57 15 in informing the doctor that you were with a new partner, you

16 had some drinks, you passed out, you may have had sexual

17 intercourse, you don't remember. If you told the doctor those

18 things as she has written down, what possible treatment were

19 you looking for?

01:57 20 A. STD.

21 Q. None is indicated here.

22 Were you in any pain?

23 A. No.

24 Q. Did you articulate a concern that you might have contracted

01:57 25 an STD?

01:57 1 Because that's not noted in the doctor's record.

2 A. I went there for an STD screen. It is. I told him about a

3 week before that I had an STD. So, in the heat of the moment

4 we were trying to use the underwear as a barrier. And that's

01:58 5 probably not a good barrier. And I'm susceptible to getting

6 them because I have two STDs already. So, then sometimes

7 there's open wounds and everything else, so --

8 Q. I just want to ask you one or two questions about how you

9 described you and your partner attempted to have intercourse

01:58 10 with your underwear on. I'm really not kidding when I ask

11 these questions, or trying to be facetious, so please don't

12 take it the wrong way.

13 Do you remember what kind of underwear your

14 partner was wearing: boxers, briefs?

01:58 15 A. Just regular type underwear. They were not boxers.

16 Q. So, that would be briefs?

17 A. Sort of, yeah.

18 Q. And you were wearing --

19 A. A thong.

01:59 20 THE COURT: Do we really need to go into this?

21 MR. McKINNEY: Well, I'm getting ready to ask -- I

22 don't like it either. I would rather floss with barbed wire

23 than do this, but I have another question.

24 BY MR. McKINNEY:

01:59 25 Q. And that is, Ms. Jones, that you explained to our jury that

01:59 1 you were -- in response to this record the doctor has created,
2 has put down -- explained that you were penetrated between two
3 sets of underwear. And I'm wondering, given the fact that
4 you're now telling us that this young man was wearing briefs,
01:59 5 if you've taken any time to analyze the geometry of that
6 particular situation.

7 A. Well, we tried --

8 Q. Doesn't it seem rather impossible to accomplish what you
9 say happened, given the clothing that the two of you were
01:59 10 wearing?

11 A. No. It's possible. And it wasn't working out very well.
12 We didn't have other protection, so we passed out. We went to
13 sleep.

14 MR. MCKINNEY: Pass the witness.

02:00 15 THE COURT: Okay. All right.

16 MS. VORPAHL: May it please the Court.

17 Could we put Joint Exhibit 117 up, please?

18 **RE CROSS-EXAMINATION**

19 BY MS. VORPAHL:

02:00 20 Q. Ms. Jones, can you see that exhibit?

21 A. Yes, I can.

22 Q. This is a photograph that was taken in the process of -- or
23 after you left your room on July the 28th. Isn't that right?

24 A. Yes.

02:01 25 Q. Okay. And it's taken of your cabinet in your room. Is

02:01

1 that correct?

2 A. Yes.

3 Q. And that's -- first, it's dark and I know that. And I've
4 got a lighter copy. If you would like to look at the lighter

02:01

5 copy, would that be helpful to you?

6 A. I think I can tell what's going on.

7 Q. Okay. Can you tell the jury what's there in that shelf?

8 A. Okay. What I believe is there, it looks to me like a water
9 bottle, Smirnoff and cup, and possibly blankets or something.

02:01

10 Q. Down below?

11 A. Yes.

12 Q. Okay. Let's focus on that middle shelf.

13 A. Okay.

14 Q. Was that your water?

02:01

15 A. Probably.

16 Q. And that was the bottle of Smirnoff that you bought when
17 you went with Sara Simco on the 26th and bought liquor?

18 A. Yes.

19 Q. And those are your cups?

02:02

20 A. Yes.

21 Q. Did you buy those the same day?

22 A. Yes -- maybe. It was the day I went to the PX.

23 Q. Okay. So, you bought those cups at the PX?

24 A. Yes.

02:02

25 Q. All right. And those are -- that's the cup that you -- the

02:02 1 kind of cup that you brushed your teeth with that you told us
2 about?

3 A. Yes.

4 Q. And it's the kind of cup that you had the Baileys in?

02:02 5 A. Yes.

6 Q. Okay. I went to the grocery store last night and I bought
7 some cups like that.

8 Now, you said that your cup was an 8-ounce cup,
9 that cup was an 8-ounce cup. Is that right?

02:02 10 A. I thought so.

11 Q. Okay. Well, I want to show you -- let me --

12 MS. VORPAHL: May I approach the witness, your Honor?

13 THE COURT: You may. You may, yes.

14 BY MS. VORPAHL:

02:02 15 Q. I'm going to show you the same picture because it's easier
16 here.

17 A. Oh, okay.

18 Q. Can you see if you can count the number of cups that are in
19 that stack?

02:02 20 And I'll tell you that I counted it a bunch of
21 times and I counted 18.

22 A. I'll trust you.

23 Q. Well, no, no. I would love for you to count it.

24 A. I don't know if I can see that. I can't tell.

02:03 25 Q. Okay. Well, this package of cups is 20 cups. Do you have

02:03 1 any recollection of whether it was about a stack like this?

2 A. It's whatever is in the picture.

3 Q. Right. Okay. That's great.

4 Well, let's take two of these cups out. Like I

02:03 5 said, I counted it a bunch of times, and I think there's 18

6 there. And these are 18-ounce cups. Okay?

7 A. Oh, okay.

8 Q. Okay. So, we're going to set these right here

9 (indicating).

02:03 10 And then I'm going to count -- these are 9-ounce

11 cups. I couldn't find any 8-ounce cups.

12 A. Okay.

13 Q. Okay? And I'm going to count out 18 of these. There's 50

14 in here, so I'm going to count off of one side, 18 cups here.

02:04 15 And I'm going to set these down beside these other ones.

16 Now, can you tell, as you look at this picture of

17 your room, which of these -- which of these cups is more likely

18 the kind of cup in the picture?

19 A. The 20.

02:04 20 Q. Okay. So, you were wrong when you said it was an 8-ounce

21 cup?

22 A. Yes. It was represented to me, which --

23 Q. And it's actually an 18-ounce cup?

24 A. Okay.

02:04 25 Q. Okay? So, it's the 18-ounce cup that looks more like what

02:04

1 you had bought --

2 A. Yes.

3 Q. -- and what you poured Baileys into?

4 A. That's what it looks like, from the picture.

02:04

5 Q. Okay.

6 A. I was -- it was represented to me the different ounces in
7 cups. So I was kind of going off of that. So sorry.

8 Q. All right. So when you were e-mailing with Pete Arroyo on
9 the morning of July 28th, you also received an e-mail from Sara

02:05

10 Simco. Isn't that right?

11 A. I said that to somebody --

12 Q. That's right.

13 A. -- a long time ago, but I don't specifically remember it.

14 Q. Well, I think you've even testified about the fact that you
15 do recall -- and if I'm wrong, please correct me -- that you do
16 recall an e-mail with Sara Simco that had something to do with
17 a notebook that you had left in her area, since you had been
18 working with her until just the day before. Do you have any
19 recollection of that?

02:05

20 A. Not right now.

21 Q. Okay. Could we put up Exhibit B67, which is your statement
22 to the Department of State. And if we could go to the fourth
23 page of that report, do you have any recollection that there
24 were other things that you put in that e-mail or that Sara
25 Simco put in her e-mail to you on the morning of July 28th?

02:06

02:06 1 A. I don't remember right now, but I remember calling them
2 later and saying something.

3 Q. All right. You remember that originally you told the
4 Department of State that you recalled exchanging e-mails with
02:06 5 Sara Simco about a notebook that you had left in her work area,
6 your old work area?

7 A. Yeah.

8 Q. All right.

9 A. That's what it said in my statement, yes.

02:06 10 Q. Yes.

11 A. I just don't remember them, sitting here.

12 Q. And then you called the Department of State on August 31st
13 of 2005 to relay some additional information. Isn't that
14 correct?

02:06 15 MS. VORPAHL: Could we highlight and enlarge
16 Paragraph 15 of Ms. Jones' statement to the Department of
17 State?

18 BY MS. VORPAHL:

19 Q. Do you recall that on August 31st you called the Department
02:07 20 of State to relay some additional information?

21 A. I'm sure I did.

22 Q. Well, take a look here and see if this refreshes your
23 recollection. It says that you stated that you recalled
24 receiving the e-mail from Simco as previously stated, but
02:07 25 included some additional information.

02:07 1 Did you do that when you called the Department of
2 State on August 31st of 2005?

3 A. I believe I did.

4 Q. And what you stated, the additional information that you
02:07 5 provided, was that you recalled that in the body of the
6 message, Sara Simco had mentioned something about Bortz's
7 girlfriend returning to Iraq from R and R, right?

8 A. I don't know exactly what the contents of the e-mail is
9 right now, but obviously I knew it then.

02:07 10 Q. And you reported it correctly to the Department of State on
11 August 31st of 2005?

12 A. I probably did.

13 Q. Well, did you? Or did you report it incorrectly on
14 August 31st?

02:08 15 A. I did my best to comply with the investigation.

16 Q. All right. So, you did state that in the body of the
17 message Sara Simco mentioned something about Bortz's girlfriend
18 returning to Iraq?

19 A. Apparently I did, yes.

02:08 20 Q. And you also responded to Sara Simco that you felt that you
21 should be the one to relay the information to Bortz's
22 girlfriend, as you were the one involved.

23 A. I don't know what that's talking about. Let me read it
24 again.

02:08 25 I have no idea.

02:08 1 Q. So, do you not think you said that to the Department of
2 State?

3 A. No. I'm sure I did. Do you have the e-mail so that we
4 know what it's talking about?

02:08 5 Q. No. You were describing the e-mail, weren't you?

6 A. Apparently, yes.

7 Q. All right. You testified yesterday that when you got back
8 to Houston, you were in excruciating pain, particularly in your
9 breasts. Is that right?

02:09 10 A. Yes.

11 Q. And you made an appointment with Dr. Sabrina Lahiri for
12 August the 15th, 2005?

13 A. Yes.

14 Q. Because that was the earliest day that she could see you?

02:09 15 A. Yes.

16 THE COURT: Slowly, now. Slowly.

17 MS. VORPAHL: Thank you, Judge.

18 BY MS. VORPAHL:

19 Q. But even before you had been to that appointment with
02:09 20 Dr. Lahiri, you had already inquired about returning to Iraq to
21 work for KBR, hadn't you?

22 A. It's possible.

23 Q. Well, do you recall that I took your deposition only about
24 a month and a half ago?

02:09 25 A. Yes.

02:09 1 Q. And do you recall that I asked you that same question at
2 that time?

3 A. No.

4 MS. VORPAHL: Your Honor, may I approach the witness?

02:09 5 THE COURT: You may.

6 BY MS. VORPAHL:

7 Q. Let's read this along together. My question of you was --
8 started with:

9 "So you called the doctors as soon as you got
02:10 10 home, which was the second or third of August?"

11 And you responded?

12 A. "Yes, ma'am."

13 Q. "And you called right away?"

14 A. "Yes."

02:10 15 Q. "And they said, 'The earliest we can see you is August the
16 15th.'"

17 And your answer was?

18 A. "Because I wanted to see Dr. Sabrina Lahiri."

19 Q. My question was: "Okay. I'm just trying to get the date
02:10 20 pinpointed. The -- the doctor that called you said, "I can see
21 you on August the 15th. Is that right?"

22 A. "Yes."

23 And I still stand by that today. I don't know
24 what this exercise is for.

02:10 25 Q. Okay. And my next question was --

02:10 1 MR. KELLY: Your Honor, there's two things, actually.
2 May I approach? There's -- first of all, it's improper
3 impeachment, your Honor. She hasn't testified inconsistently.
4 But there's more than that.

02:10 5 MS. VORPAHL: Your Honor, I had to put that much
6 background in in order for the questions to make sense.

7 MR. KELLY: We're also way beyond the scope of direct.
8 This is not cross. It's recross. We're way beyond the scope
9 of redirect, your Honor.

02:11 10 THE COURT: The trouble is credibility is always an
11 issue, and that's where she's going. So I'm going to allow it.

12 MS. VORPAHL: And if you'll indulge me, there's just a
13 few more questions.

14 BY MS. VORPAHL:

02:11 15 Q. And so my next question was: "And so you knew from the
16 time you got home on August 2nd or 3rd that you would not go
17 back overseas immediately?"

18 And your answer was?

19 A. "Ma'am, I don't know what I knew. I just knew I thought my
02:11 20 injuries would start getting better. My chest injury did not
21 get better. I had to have reconstructive surgery."

22 Q. And then I said: "Okay. Take --"

23 And you said?

24 A. "I know that I inquired about trying to see if I was still
02:11 25 hireable to go back to Iraq. It was more of a curiosity thing."

02:11 1 Q. And my question then was: "So, you didn't really want to
2 go back to Iraq, but you did inquire about whether you could go
3 back to Iraq as a matter of curiosity?"

4 And your answer was?

02:11 5 A. "I was curious."

6 Q. And my question was: "So my statement is correct?"

7 A. "Yes."

8 Q. So, you did inquire about whether you could go back to work
9 in Iraq, didn't you?

02:12 10 A. Sometime, yes. I don't remember the date. That's all.

11 Q. Well, it was prior to your appointment with Dr. Lahiri on
12 August the 15th. We've established that, haven't we?

13 A. I wanted to know, for many reasons, what my status was so
14 that I could know.

02:12 15 Q. So, it wasn't just a matter of curiosity, as you told me in
16 your deposition?

17 A. Oh, it was a matter of curiosity, yes, ma'am.

18 Q. And, in fact, you contacted Gary Carter on August the 13th.
19 Isn't that right?

02:12 20 A. I think so.

21 Q. And you asked him if you could come back to work in Iraq.

22 A. I think it was an attorney-client situation back then.

23 Q. Gary Carter at KBR represented you?

24 A. No. I'm saying that an attorney, I think, wanted me to
02:13 25 inquire back then on if I was rehirable.

02:13 1 Q. So, it wasn't a matter of curiosity. Your lawyer told you
2 to do it?

3 A. It was curiosity and attorney-client privilege.

4 Q. I think I have just one more set of questions.

02:13 5 You testified yesterday afternoon about an e-mail
6 exchange with Jamie Armstrong, didn't you?

7 A. (No response).

8 Q. First you said it was with regard to a computer, right?

9 A. My attorney said computer, yes.

02:13 10 Q. Okay. And you didn't have a computer in Iraq, did you?
11 You didn't bring a computer?

12 A. I had -- yes, I brought a computer from Houston.

13 Q. Okay. I thought it was an external hard drive that you
14 had.

02:13 15 A. Brought an external hard drive, too. I was issued a
16 computer in Houston.

17 Q. So, you brought KBR's computer from Houston?

18 A. Yes.

19 Q. You didn't ever think that belonged to you, did you?

02:13 20 A. No.

21 Q. All right. So, you brought KBR's computer from Houston and
22 a personal external hard drive?

23 A. Yes.

24 Q. All right. And you've told this jury that you believe that
02:14 25 KBR had that external hard drive. Is that right?

02:14 1 A. Yes.

2 Q. But you know that that's not accurate, don't you, because
3 Jamie Armstrong --

4 A. No.

02:14 5 Q. -- e-mailed you back and explained to you that the
6 Department of State had confiscated that hard drive?

7 A. There's other e-mails to the chain.

8 Q. Well, let's take a look at the e-mails.

9 MS. VORPAHL: Your Honor, this is KBR Exhibit 107,
02:14 10 exactly, is what I am going to start with, I think.

11 BY MS. VORPAHL:

12 Q. The bottom of this page -- first page of KBR Exhibit 107 is
13 the e-mail that we looked at yesterday.

14 MS. VORPAHL: If you could highlight and enlarge that
02:14 15 bottom e-mail.

16 THE WITNESS: It's pretty clear on the screen.

17 MS. VORPAHL: All right. Can everyone see it?

18 BY MS. VORPAHL:

19 Q. This is the e-mail that you read and referred to yesterday,
02:15 20 saying, "This is the third e-mail regarding my personal hard
21 drive." Right?

22 A. Yes.

23 Q. All right. Now, what you didn't show the jury yesterday is
24 a response that you received from Ron Boutwell. Ron Boutwell
02:15 25 was the head of human resources at KBR and Camp Hope, right?

02:15

1 A. Yes.

2 Q. All right. And he responded to you on Saturday, September
3 the 17th at 1:48 in the afternoon. And he said what?

4 A. Do you want me to read it?

02:16

5 Q. Please.

6 A. Okay. "Jamie, we are trying to obtain the external hard
7 drive from DSS. They currently have possession of your hard
8 drive, as we have kindly asked them to return it as soon as
9 possible. We advise as soon as they have returned this item to

02:16

10 us."

11 Q. All right. And that wasn't the only response that you
12 received, was it?

13 A. No.

14 Q. What was your response to Mr. Boutwell?

02:16

15 A. "Thanks for your help."

16 Q. "Thanks for your help."

17 And what did he respond?

18 A. "You are welcome."

19 Q. Then you also received a response from Jamie Armstrong on
20 Tuesday, September the 20th. Is that right?

02:16

21 A. Yes.

22 Q. And what does that response indicate?

23 A. "Your hard drive is boxed up and ready to mail. Which
24 address would you send it to?" [sic]

02:17

25 Q. You received the hard drive back, didn't you?

02:17

1 A. Eventually.

2 Q. All right. But when it was time to produce documents in
3 this case, you didn't have that hard drive, did you?

4 A. No.

02:17

5 Q. Well, where did it go?

6 A. Well, I think I sold it in a yard sale.

7 Q. So we don't know what was on that hard drive?

8 A. For another reason, yes. You're missing another e-mail.

9 Q. Well, you never produced that hard drive in this lawsuit,
10 did you?

02:17

11 A. No.

12 Q. All right. What did you do with this KBR computer that you
13 say that you took overseas?

14 A. It was confiscated by KBR in Iraq.

02:17

15 Q. By whom?

16 A. By the IT department.

17 Q. Well, who was that?

18 A. No clue.

19 Q. Did somebody come to you and take it from you?

02:18

20 A. I left it in the office, and they kept it in the IT
21 department.

22 Q. You took it to the office on July 28th?

23 A. I think it stayed in the office -- I don't remember. It
24 was in the office, though, when I left.

02:18

25 Q. So, you left your KBR issued laptop with the IT people on

1 July the 28th?

2 A. On my desk. Never got it back. But that's okay. It's not
3 my property.

4 Q. Right. I'm trying to figure out how you arranged to get it
5 there on the morning of July 28th. You just left it there when
6 you left the office?

7 A. I think so.

8 Q. All right.

9 MS. VORPAHL: I have nothing further, your Honor.

10 THE COURT: Okay. Anything further of this witness?

11 MR. KELLY: Yes, your Honor.

12 **FURTHER REDIRECT EXAMINATION**

13 BY MR. KELLY:

14 Q. Jamie, Ms. Vorpahl just asked you about some e-mails dated
15 September 17th and September 20th of 2005, right?

16 A. Yeah. I was missing one.

17 Q. Yeah.

18 A. That would have cleared all of it up, I think.

19 MR. KELLY: I'm going to offer as the next plaintiff's
20 exhibit in line a document that's Bates stamped KBR 002445.

21 MR. McKINNEY: May I see it?

22 MR. KELLY: Yes.

23 MS. VORPAHL: May I look at it?

24 MR. KELLY: I think it's Number 82?

25 MS. VORPAHL: I certainly have no objection to it.

02:20 1 THE COURT: Okay. Admitted without objection.

2 BY MR. KELLY:

3 Q. I'm going to try to offer it here, Jamie, just because --

4 First of all, I think we talked about this the

02:20 5 other day. Do you know who William Goodgine is?

6 A. He's with KBR security.

7 Q. All right. Do you know who Ron Boutwell is?

8 A. He is the head of HR, I think.

9 Q. That's the person that you had e-mailed saying "thank you"

02:20 10 back in September?

11 A. Right.

12 Q. Okay. So, a month or so before that, back on August 3rd,

13 let's read what Will Goodgine of KBR security says to Ron

14 Boutwell. Go ahead and read that into the record.

02:20 15 A. "We have a personal hard drive that belongs to Jamie Jones.

16 Would you have any issue with us mailing it to her" -- I think

17 that's supposed to be "or" -- "her HOR" -- I guess "home of

18 residence," okay -- "or would you need to have your IT

19 department examine the information on it? Will."

02:21 20 Q. And I think I misspoke. This is actually being sent to the

21 State Department with a copy to Ron Boutwell, right?

22 A. Yes.

23 Q. Okay. And it's interesting that William Goodgine has an

24 e-mail address that says "KBR"?

02:21 25 A. Right.

02:21

1 Q. And the word he uses is "we"?

2 A. Right.

3 Q. "We have"?

4 A. "We have."

02:21

5 Q. Does that confirm your suspicion that KBR, in fact, had
6 your hard drive, Jamie?

7 A. Absolutely. And I -- when I got it, there wasn't much left
8 on it. So, there wouldn't have been much to produce. There
9 was a couple of pictures that were irrelevant to anything. Of

02:21

10 my dog.

11 Q. Is that why you sold it in a yard sale?

12 A. Yeah.

13 Q. I think this was Joint Exhibit 117. And I know that's a
14 poor quality. You've seen a better quality of that photograph,
15 though, haven't you?

02:21

16 A. Somewhere.

17 Q. How much Smirnoffs is left in that bottle?

18 A. I don't even think it's opened.

19 Q. By the way, you were asked about some e-mails with Sara
20 Simco on the morning of the 28th?

02:22

21 A. Yes.

22 Q. That would be on whose computer system?

23 A. KBR's. Never seen it since.

24 Q. And the issue about applying for a job back in Iraq being
25 attorney-client privileged, was that between you and I?

02:22

02:22

1 A. No.

2 Q. Anybody at this table and you?

3 A. No.

02:22

4 Q. Okay. You were asked by Mr. McKinney about waking up on
5 the top bunk?

6 A. Yes.

7 Q. Is there anything that you know about the last people that
8 you remember being awake with that might suggest how you got up
9 on a top bunk?

02:23

10 A. Can you rephrase the question?

11 Q. What did they do for a living?

12 A. They're firefighters.

13 Q. That suggest to you how you might have got on the top bunk?

14 A. Yes.

02:23

15 Q. You talked earlier about an electronic signature. What is
16 an electronic signature?

17 A. It was my signature that I photocopied, and took the
18 photocopy and -- wait. No, it was my signature, and I took a
19 picture of it, and then I scanned it.

02:23

20 Q. Why would you do that?

21 A. So that my friend or advocate, or whatever you want to call
22 her, could help me advocate for other crime victims all over
23 the world.

24 Q. Was that the Beth Reichel you were talking about?

02:24

25 A. Yes.

02:24 1 Q. And I think you mentioned that there were a lot of letters
2 sent?

3 A. Every senator and congressman in the United States, yes, a
4 few times.

02:24 5 Q. And did you sit down and pen each of those letters?

6 A. No.

7 Q. And is that what Ms. Reichek was doing on your behalf?

8 A. Yes.

9 Q. You were asked about Bortz 191, Jamie. And I just want to
02:24 10 point out one small part for you. On Bortz 191, you've been
11 asked a lot of questions about this, and honestly, I didn't
12 know what this meant until the doctor took the stand. But it
13 says: "May have" -- I'm sorry.

14 "She would like a urinary drug screen performed."

02:25 15 Did you ask for a urinary drug screen to be
16 performed?

17 A. Yes, when I got back to Texas. I wanted my own performed.

18 Q. Well, Jamie, if you had wanted to make doggone sure that
19 there was evidence of a drug in your system, do you think you
02:25 20 could have accomplished that?

21 A. I guess I couldn't accomplish it. Apparently the beauty of
22 the date rape drug is it leaves your system so quickly. But I
23 wanted to just capture any evidence, because it was just -- I
24 just wanted some answers.

02:25 25 Q. I guess that's my point. You wanted to capture evidence?

02:25

1 A. Yes.

2 Q. If you wanted to create evidence, this would have been the
3 opportunity, wouldn't it?

4 A. What do you mean?

02:25

5 Q. If you wanted to take a drug, you could have, couldn't you?

6 A. Well, yeah.

7 Q. And then it would have shown up in your system when
8 Dr. Scott took your test?

9 A. Right. I didn't do that.

02:26

10 Q. Dr. Scott didn't find the drug, did she?

11 A. No.

12 MR. KELLY: I'll pass the witness.

13 THE COURT: Okay.

14 MR. McKINNEY: I don't have anything further, your
15 Honor.

02:26

16 MS. VORPAHL: I have nothing further.

17 THE COURT: Okay. Thank you, Ms. Jones, you may step
18 down. Thank you very much.

19 THE WITNESS: Thank you.

02:26

20 MS. CATES: Your Honor, we're going to call somebody
21 out of order. Can I go get her?

22 THE COURT: Yes. Tell me the name.

23 MS. CATES: Kimberly Nichols.

24 THE COURT: Okay. This goes back to what I tried to
25 communicate this morning. This is a witness that does, in

02:26

02:26 1 fact, belong to Halliburton but will be taken out of order so
2 as to accommodate her travel schedule. So, as I know you will
3 be anyway, please be just as receptive and attentive to
4 defendants' witnesses as you have been to plaintiff's.

02:26 5 Good afternoon, Ms. Nichols. We're going to have
6 you up here in the seat nearest me. Let's see. Maybe we can
7 clear off these exhibits. We've about taken all of your space
8 here, but --

02:27 9 MS. NICHOLS: That's okay. I don't take up much
10 space.

11 THE COURT: All right. Ms. Loewe will administer the
12 oath.

13 MS. LOEWE: Do you solemnly swear the testimony you're
14 about to give in the matter now before the Court will be the
02:27 15 truth, the whole truth, and nothing but the truth?

16 THE WITNESS: Yes, I will.

17 **KIMBERLY NICHOLS, DULY SWORN, TESTIFIED:**

18 **DIRECT EXAMINATION**

19 BY MS. CATES:

02:27 20 Q. Ms. Nichols, where do you work right now?

21 A. In Afghanistan.

22 Q. For what company?

23 A. Fluor.

24 Q. Is Fluor a government contractor?

02:27 25 A. Yes, it is.

02:27 1 Q. Does Fluor have any relationship with KBR or Halliburton?

2 A. No, it does not.

3 Q. What do you do for Fluor?

4 A. I'm an air operations specialist.

02:27 5 Q. What are the living conditions like where you are right

6 now?

7 A. I live in a tent with 37 other females.

8 Q. And are you on R and R right now?

9 A. No.

02:27 10 Q. Just took a leave to come here?

11 A. I had to take a personal leave, yes.

12 Q. Have you ever worked for KBR Halliburton?

13 A. Yes.

14 Q. When did you work for KBR?

02:28 15 A. Started May, 2004, through September, 2007. Took a year

16 off, and then came back February 2009. Worked through

17 September 2009, and that's when I left.

18 Q. What camps did you work at, and where, for KBR?

19 A. I worked at -- let's see. I was in Kuwait. The initial

02:28 20 camp was Camp Black Jack. It was a transition camp. Then we

21 were assigned to an area called Khalifa. From there I was

22 transferred to Baghdad to Camp Victory. And then from there

23 assigned to Dubai. And there -- from there to Camp Hope.

24 Q. If I counted correctly, that's five different KBR camps?

02:28 25 A. When I came back in 2009, I worked at Camp Taji.

02:28

1 Q. So six. Okay.

2 A. Yes.

3 Q. How long were you at Camp Hope?

4 A. Two -- two and a half years.

02:29

5 Q. What time period was that?

6 A. That was from February 2005 through September 2007.

7 Q. I want to take a step back for just a minute. How many
8 government contractors have you worked for?

9 A. Three.

02:29

10 Q. In your experience with KBR at five -- or I think now six
11 different camps, were you ever sexually harassed?

12 A. No.

13 Q. Did you ever see sexual harassment?

14 A. No.

02:29

15 Q. Were you ever sexually assaulted?

16 A. No.

17 Q. Assaulted in any way?

18 A. No.

19 Q. Were you ever the subject of catcalls?

02:29

20 A. No.

21 Q. Any inappropriate behavior of a sexual nature?

22 A. No.

23 Q. Before you went overseas with KBR, did you have to do
24 training in Houston?

02:29

25 A. Yes.

02:29

1 Q. Can you tell me a little bit about that?

2 A. For one week, everybody, every employee that is assigned to
3 LOGCAP III, has to go through one week of in-processing. The
4 week consists of training regarding company policies,
5 everything from benefits to time keeping, Code of Business
6 Conduct, HazMat training.

02:30

7 Q. Was this at Greenspoint, I think we've heard?

8 A. Yes, at Greenspoint.

9 Q. And you said it's a week long?

02:30

10 A. Yes.

11 Q. And is that mandatory training?

12 A. Yes.

13 Q. What training do you remember on the Code of Business
14 Conduct?

02:30

15 A. They went over -- it was a PowerPoint presentation. They
16 cover everything from SEC disclosures to trafficking in
17 persons, to EEOC, harassment and what to do with it.

18 Q. In your experience with KBR, does every employee receive
19 the Code of Business Conduct?

02:30

20 A. Yes.

21 Q. And are employees disciplined for violating the Code of
22 Business Conduct?

23 A. Yes, they are.

24 Q. Did you learn anything about housing accommodations at the
25 Greenspoint training?

02:31

02:31 1 A. During the training, they showed pictures of everything
2 from living in tents to camel spiders. They tried to disclose
3 as much as possible how harsh the environment could be.

02:31 4 Q. Do you think KBR was trying to prepare you for what you
5 were about to see?

6 A. Yes, they were.

7 Q. I think you said they showed you pictures of tents?

8 A. Yes.

02:31 9 Q. What were you told as far as tents versus barracks versus
10 individualized containerized housing?

11 A. It would really depend on the site that you wound up at.
12 There were some sites that still lived in tents. Some had
13 living containers. I believe -- and I could be wrong, but I
14 believe Camp Hope was the only one that had barracks.

02:31 15 Q. What did they tell you about separation of employees by
16 gender for housing, if anything?

17 A. Well, you're not going to be sleeping or living with same
18 sex. You're going to be separated, of course, by your gender.

19 Q. Was it your understanding that the barracks would be co-ed?

02:32 20 A. Yes.

21 Q. But that you would -- but what about the individual rooms
22 within the barracks?

23 A. No. No. Females have their own rooms; males have their
24 own rooms.

02:32 25 Q. Okay. During this training at Greenspoint, were you given

02:32

1 your employment agreement?

2 A. Yes.

3 Q. Did you read your employment agreement?

4 A. Yes, I did.

02:32

5 Q. Was it hidden in a stack of voluminous documents or was it
6 an individual agreement that you were provided?

7 A. No. They called us out by name, gave us our employment
8 agreement, and at that point gave us the opportunity to sit
9 down and read it.

02:32

10 Q. Did you notice an arbitration provision in your agreement?

11 A. Yes.

12 Q. Did that bother you?

13 A. No.

14 Q. Going even a step back, before you even got to the

02:32

15 Greenspoint training, when you were applying for a position
16 overseas, did you have to fill out a medical form for KBR?

17 A. Yes, we did.

18 Q. Did you complete that form truthfully?

19 A. Yes.

02:33

20 Q. Is that important?

21 A. Yes, it is.

22 Q. Can you tell me why?

23 A. When you're living in a war zone, you can't go over there
24 with any kind of medical conditions. So mental or physical --
02:33 25 what's the word I'm looking for? Diabetes you can't have. If

0 2 : 3 3 1 you're bipolar, obviously you can't have. The medical
2 facilities that we have available to us aren't full service.

3 Q. And that would be the CASH Army hospitals?

4 A. The Combat Support Hospitals were exactly that. Those were
0 2 : 3 3 5 for people who needed emergency care.

6 Q. I think you said you were at Camp Hope from February of
7 2005 to sometime in 2007?

8 A. Yes.

9 Q. What was your job title?

0 2 : 3 3 10 A. When I originally arrived at Camp Hope, I was an HR
11 associate. And about June -- I think it was June of 2005 I was
12 promoted to an HR generalist.

13 Q. Did KBR provide you training for HR?

14 A. No. Because they didn't train you to be HR. You came in
0 2 : 3 4 15 with the experience.

16 Q. Okay. And what -- within the realm of HR, what was your
17 sort of focus and your primary goal, your primary job
18 responsibilities at KBR?

19 A. When I first arrived at Camp Hope, I was tasked with doing
0 2 : 3 4 20 employee travel. And that took a lot of time. I had to set up
21 a brand-new database for Camp Hope, create a new filing system
22 and a new procedure on how to get our employees in and out of
23 Camp Hope.

24 Q. Did your job responsibilities include investigating reports
0 2 : 3 4 25 of harassment, or sexual harassment, or anything like that?

02:34

1 A. No. They did not.

2 Q. Do you know Kara Hall?

3 A. Yes, I do.

4 Q. What was his job in HR?

02:35

5 A. Kara Hall was our HR supervisor at Camp Hope.

6 Q. Was he responsible for investigating any harassment
7 complaints that may have come up?

8 A. Yes, he was.

9 Q. And would you defer to him on those issues?

02:35

10 A. Absolutely.

11 Q. But you worked with Kara Hall and Jamie Armstrong and
12 everyone in the same office?

13 A. Yes.

14 Q. Would you hear what was going on in the HR office on a
15 daily basis?

02:35

16 A. Occasionally.

17 Q. Are you aware of any complaints of sexual harassment at
18 Camp Hope?

19 A. No.

02:35

20 Q. And that's in your two-plus years there?

21 A. Yes.

22 Q. Have you ever heard of Rohypnol being at Camp Hope, or the
23 Green Zone in general?

24 A. No.

02:35

25 Q. What about GHB?

02:35

1 A. I don't know what that is.

2 Q. That's okay.

3 Roofies, which I think is another name for
4 Rohypnol?

02:36

5 A. No.

6 Q. Where did you live when you first got to Camp Hope in
7 February of 2005?

8 A. I lived in the barracks, specifically Room 201.

9 Q. Was that Barracks 2?

02:36

10 A. Yes.

11 Q. There were two barracks side by side? Is that --

12 A. Yes.

13 Q. -- how it goes?

14 MS. CATES: Your Honor, I would like to use a
15 demonstrative. Should we approach?

02:36

16 MR. KELLY: Never seen it.

17 MS. CATES: You saw it yesterday. But I can show it
18 to you.

19 THE COURT: Just show it to them before you approach.
20 You may be okay.

02:36

21 MS. CATES: I can get you a copy.

22 Wendy, will you put up the barracks exhibit
23 demonstrative?

24 Can we look at the first floor first?

02:37

25 THE WITNESS: Can I get my glasses real quick?

02:37 1 MS. CATES: While that's pulling up, can I approach
2 the witness to give her something?

3 THE COURT: Yes.

4 BY MS. CATES:

02:37 5 Q. This is Joint Exhibit Number 106. Here you go.

6 A. Okay.

7 Q. I will apologize in advance and tell you this is going to
8 be a little bit tedious.

9 Here's the first floor of the barracks on the
02:37 10 screen. Does that look like what you remember?

11 A. Yes.

12 Q. And there's the ladies' room at the end?

13 A. Down -- yeah, on the first floor, down at the end of the
14 stairs.

02:38 15 Q. This is the barracks in July of 2005?

16 A. Okay.

17 Q. When did you move out of the barracks?

18 A. In, I believe it was May 2005.

19 Q. Okay. So, just a couple of months before Jamie Jones moved
02:38 20 in?

21 A. Yes.

22 Q. Do you know why these rooms appear to be empty?

23 A. I know at one point we were kind of re-doing the barracks.
24 We went in, pulled the carpet out, painted. And that may be
02:38 25 why those rooms -- those rooms are all blocked off and empty.

02:38

1 Q. Perhaps they did a section at a time?

2 A. At a time.

3 MS. CATES: Can we look at the second floor of the
4 barracks?

02:38

5 BY MS. CATES:

6 Q. Is this what the second floor looked like to you?

7 A. Yes.

8 Q. You'll see Room 201 where it says Jamie Jones?

9 A. Yes.

02:38

10 Q. What room were you in when you were in Barracks 2?

11 A. Same room, 201.

12 Q. I want to go through a list of everybody that was living
13 and residing in Camp Hope in July of 2005 and place these
14 people that are on the diagram from the list.

02:39

15 THE COURT: Oh, now, why do we need to do that?

16 MS. CATES: If you'll stipulate that it's accurate. I
17 just don't want them to come back and say, "Well, how do we
18 know that Sally Munson lived there."

19 THE COURT: Ms. Morris?

02:39

20 MR. KELLY: It's hard to stipulate to anything we've
21 just seen. But we may be willing to stipulate, your Honor. I
22 don't have a copy of it. I've not been allowed to review it
23 other than very briefly. Sort of being asked to do it on the
24 spot without having the opportunity to really review the thing.

02:39

25 MS. CATES: You have the barracks list, right?

02:39

1

MR. KELLY: I've never had this document.

2

MS. CATES: Sure. And if you want to take a recess,
I'm fine to do that. I'm sorry.

4

THE COURT: No, I don't want to do that either.

02:39

5

Tell me what the issue in dispute is.

6

MS. CATES: The issue is that Ms. Jones has claimed
that there's no females in those barracks and that she lived
there for four days and never saw another woman.

9

02:40

10

You can tell there are a lot of women. She
walked by several women on her way -- I mean, in fact -- let's
just say, if she was going to walk down the hall to go to the
restroom, she would pass 18 women -- or least women that lived
there. I mean, obviously, they wouldn't all be standing in the
hall. But it just goes to show that there were women there and
that it wasn't an all-male barracks.

02:40

15

16

THE COURT: The only thing different between what you
already had, Mr. Kelly, and what you now have is that the
various names are now placed in individual rooms?

19

02:40

20

MR. KELLY: I don't know if that's the only
difference. That's my point, your Honor. We just saw it, so I
don't know if that's the only difference.

22

If, in fact, that's the only different, then we
don't object to it being offered.

24

02:40

25

I do object to the commentary, however, that
these women were actually in their rooms. That's the whole

02:40 1 point. They may have been assigned these rooms; that doesn't
2 mean they were in them.

3 THE COURT: We've had the barracks list. That's
4 admitted, right?

02:41 5 MS. CATES: Yes, that's a joint exhibit.

6 THE COURT: I just don't see how we can have anybody
7 on the other side either agree or disagree about the accuracy
8 of this demonstrative, so I'm not going to allow it. I'm not
9 going to allow it.

02:41 10 MS. CATES: Allow the demonstrative?

11 THE COURT: Using your demonstrative, no.

12 MS. CATES: Okay.

13 THE COURT: Ladies and gentlemen, have I explained
14 earlier what a demonstrative is? It's an exhibit unlike others
02:41 15 in that it's just used to demonstrate what a lawyer is trying
16 to show. It's not a document that was created at the time of
17 the relevant events. It's not a document that appeared in any
18 part of the medical treatment or personal recovery from any of
19 the alleged events. It's simply an illustration used to bring
02:41 20 home a point a lawyer is trying to make. It does not go back
21 to the jury room when you're ready for deliberations.

22 In this instance, I think even beginning to
23 determine whether plaintiff could agree to this -- that is,
24 stipulate to it -- would require her to go back and check
02:42 25 personnel records at KBR, and perhaps even interview the

02:42 1 different women who were allegedly assigned those rooms. So
2 I'm not going to allow it.

3 You may continue.

4 BY MS. CATES:

02:42 5 Q. Ms. Nichols, when you were living in the barracks in
6 Room 201, were other women living on your floor?

7 A. Yes.

8 Q. And this was, I think, two months before Jamie moved into
9 the barracks?

02:42 10 A. Yes.

11 Q. What about on the first floor? Were there also women
12 living there?

13 A. Yes.

14 MS. CATES: Your Honor, since my demonstrative was not
02:42 15 allowed, can I ask her about people on the list?

16 THE COURT: Sure.

17 MS. CATES: Thank you.

18 BY MS. CATES:

19 Q. Okay. What we have as Joint Exhibit 106 in front of you --

02:42 20 A. Oh, okay.

21 Q. -- is a list of where people were living in Camp Hope in
22 July of 2005. So, since you were still living there, at first
23 you'll look for your name -- luckily it's alphabetical -- and
24 tell us what it says next to your name.

02:43 25 A. Okay. The number next to my name is the trailer I was

02:43 1 assigned to. It was Trailer K114, and I was on the left side.

2 Q. And did you move into that trailer when you left the
3 barracks?

4 A. Yes.

02:43 5 Q. If you will look for Susan Jamison and tell me where she
6 was living. If it helps, she's on the first page.

7 A. Barracks 2, Room 202.

8 Q. Where was Room 202 in relation to Room 201, the room that
9 Jamie Jones had?

02:43 10 A. I don't remember if it was across the hall or it was right
11 next door. I don't think it was next door, because the room
12 next to 201, I believe, was a male room.

13 Q. Okay.

14 THE COURT: Male, M-A-I-L? Is that right?

02:44 15 THE WITNESS: Yes. M-A-L-E.

16 MR. McKINNEY: I think it's M-A-L-E, yes.

17 THE COURT: M-A-L-E. I'm sorry. I thought we were
18 back into postage. I'm sorry.

19 BY MS. CATES:

02:44 20 Q. All right, how about Sally Mundon? Can you find her on
21 this list?

22 I'll look, too, and maybe I can point you to the
23 page.

24 A. She would have been in Barracks 2, Room 202.

02:44 25 Q. Second floor?

02:44

1 A. Yes.

2 Q. What about Janice Matthews?

3 A. Barracks 2, Room 210.

4 Q. Second floor?

02:44

5 A. Yes.

6 Q. How about Trina Switalski? I'm horrible with last names.

7 Sorry.

8 THE COURT: You might spell that one for the court
9 reporter.

02:44

10 MS. CATES: S-W-I-T-A-L-S-K-I.

11 THE WITNESS: Switalski. She was also Barracks 2,
12 Room 211.

13 BY MS. CATES:

14 Q. And how about Patrice Johnson?

02:45

15 A. Barracks 2, Room 211.

16 Q. Alexandra Sondock?

17 A. Barracks 2, Room 211.

18 Q. Glenda Johnson?

19 A. Barracks 2, Room 217.

02:45

20 THE COURT: Let me ask this. Of the total universe of
21 men and women living in barracks that you described, what
22 percent would you estimate were female?

23 THE WITNESS: I would guesstimate about 30 percent
24 were female.

02:45

25 THE COURT: 30 percent.

02:45 1 Did that vary substantially over time or was it
2 pretty much a constant?

3 THE WITNESS: There were always going to be a higher
4 percentage of the male population versus female.

02:46 5 THE COURT: But were there significant dips below
6 30 percent for the female population?

7 THE WITNESS: No, I don't think so.

8 THE COURT: Okay. I think that's all we need --

9 MS. CATES: I think we can move on, I agree.

02:46 10 BY MS. CATES:

11 Q. Can you describe your room, Room 201, at the barracks?

12 A. It was a four-female room, two sets of bunk beds and four
13 wall lockers. Not really a whole lot of room for much else.

14 Q. What about the walls? Did they go all the way up to the
02:46 15 ceiling?

16 A. One wall went all the way up to the ceiling. I was in the
17 top bunk on the wall in between -- that was up against the room
18 next to me. It went up probably about that far (indicating)
19 above my bunk -- the top of my bunk bed. And then from the top
02:46 20 of that wall to the ceiling it was plywood.

21 Q. Did you feel safe sleeping in that top bunk right near that
22 plywood?

23 A. Yes, I did.

24 Q. In general, did you feel safe living in the barracks?

02:47 25 A. Yes, I did.

02:47 1 Q. Did you ever have any problems with the men in the
2 barracks?

3 A. No, never.

4 Q. Why did you move into a hooch?

02:47 5 A. My seniority allowed me to move into that hooch.

6 Q. And when you say seniority, how is it that an employee gets
7 from the barracks to a hooch?

8 A. It is based on your in-country date, from the date you
9 arrive in Iraq.

02:47 10 Q. Does it count if you've been in other countries for KBR, or
11 is it country by country?

12 A. No. It depends on when you get into Iraq. Right before I
13 came to Camp Hope, I was assigned to Dubai. So, even though I
14 had been on a project for nine months when I came back to Iraq,
02:47 15 I had to start all over again seniority-wise.

16 Q. And while you're waiting for you to be senior enough to get
17 into a hooch, is there a list somewhere where you can check if
18 you're moving up and how soon you think you'll get into a
19 hooch?

02:48 20 A. It is posted at the barracks and at billeting.

21 Q. Were there ever any exceptions to the seniority rule?

22 A. No. Well, let me -- if you were upper management.

23 Q. Okay. Did you feel comfortable roaming around Camp Hope on
24 your own?

02:48 25 A. Yes, I did.

02:48 1 Q. Did you feel like KBR was supporting your work efforts?

2 A. Absolutely.

3 Q. How does Camp Hope compare with all the other camps that
4 you've lived in and worked at?

02:48 5 A. It was different in that we didn't work for the military.
6 We worked with the State Department. So, we had things that
7 the other camps didn't have. We had ironing at our laundry
8 facility. They did drycleaning. We had cable TV in our
9 trailers. We had more recreational facilities.

02:49 10 Q. Is that the MWR?

11 A. That's one of the many, yes.

12 Q. Okay. How would you rank Camp Hope in relation to the
13 other camps you worked at?

14 A. It was one of the best places I've ever worked.

02:49 15 Q. And you've worked at a lot of camps?

16 A. Yes.

17 THE COURT: Why are you drawn to working abroad?

18 THE WITNESS: Number one, it's a job. Number two, the
19 pay is very good. Number three, it's an amazing environment.
02:49 20 It allows us a lot of opportunity.

21 In Camp Hope, we were right in the middle of
22 history. Not only did we have a job, but there were heads of
23 state that would pass through the area. And once again, we
24 were right in the middle of Baghdad. We were right in the
02:49 25 middle of where everything was going on.

02:49

1 THE COURT: Thank you.

2 BY MS. CATES:

02:49

3 Q. What procedures did KBR have in place for employees to make
4 complaints about harassment or anything else that they wanted
5 to complain about?

02:50

6 A. There was an ethics hotline. There was an employee dispute
7 resolution phone number. We had also -- you could come into
8 the HR office at any time and speak to anyone, as well as going
9 into the project manager's office, who always had an open-door
10 policy.

11 Q. In July of 2005, who was the project manager at Camp Hope?

12 A. Gabe Andino.

13 Q. What do you think of him?

14 A. I thought he was amazing.

02:50

15 Q. And you said the people were -- employees were welcome to
16 take complaints directly to Gabe Andino. Is that correct?

17 A. Yes.

18 Q. Was it sort of an open door policy with him?

19 A. Yes.

02:50

20 Q. Are these same options you've talked about, the hotline,
21 access to the project manager, access to HR, the employee
22 relations department --

23 A. Right.

24 Q. -- those were all at Camp Hope?

02:50

25 Were they also at all the other KBR camps?

02:50

1 A. Yes, they were.

2 Q. I think you're aware of the allegations that brought us
3 here today, generally?

4 A. Yes.

02:51

5 Q. Do you know where Jamie was taken when she got back from
6 the Army hospital?

7 A. To a VIP hooch at Camp Hope.

8 Q. Did KBR have armed guards at Camp Hope?

9 A. No. We were not allowed to carry weapons.

02:51

10 Q. Do you know if Jamie was provided things like food and
11 water and basic necessities in that trailer?

12 A. The trailer had -- it was -- it was a larger trailer
13 because it was a VIP hooch. So, it had a queen size bed; it
14 had hot and cold running water; it had air conditioning; it had
15 cable TV and a private bathroom.

02:51

16 Jamie Armstrong, the HR rep that was kind of
17 helping her, would take her food. I know she was offering her
18 counseling.

19 MR. KELLY: Your Honor, this is hearsay. She's
20 testifying about what Jamie Armstrong says she did.

02:51

21 MS. CATES: We can move on.

22 THE COURT: Yeah, the question was inappropriate.
23 I'll strike the question and answer. Not your fault. You may
24 continue.

02:52

25 BY MS. CATES:

02:52 1 Q. What is your knowledge of the investigation into Jamie
2 Jones' allegations?

3 THE COURT: Yeah, unless you were a participant in
4 that, I'm afraid I'm not going to be able to allow you to
02:52 5 answer that.

6 BY MS. CATES:

7 Q. Let me say something different, then.

8 What was your role in getting Jamie -- because --
9 well, let me strike that.

02:52 10 You didn't personally have a role in
11 investigating Jamie's allegations?

12 A. No. I did not.

13 Q. What was your role in bringing her home?

14 A. I was the one that arranged for her travel out of the Green
02:52 15 Zone to Kuwait to get her on a commercial flight and then back
16 to the States.

17 THE COURT: Did you -- before the events that bring us
18 here, did you have any personal relationship with her?

19 THE WITNESS: No.

02:52 20 THE COURT: Could you have even picked her out of a
21 crowd?

22 THE WITNESS: No.

23 THE COURT: So, you're -- whatever acquaintance you
24 had with her began after the events that are relevant to this
02:52 25 case?

02:52 1 THE WITNESS: I saw her once when she came to the camp
2 as a new hire. She came to the HR office, as do all of our
3 employees. And after that, I never saw her.

4 BY MS. CATES:

02:53 5 Q. Was there anything different about Jamie's arrangements
6 back to Houston as opposed to what you normally would do?

7 A. Yes.

8 Q. Can you explain that?

9 A. Every employee throughout Iraq had to go through what they
02:53 10 call the BTC, or the Baghdad Transition Center.

11 THE COURT: Slow down. The bag what?

12 THE WITNESS: The Baghdad Transition Center.

13 THE COURT: Baghdad.

14 THE WITNESS: They call it the BTC.

02:53 15 Every employee, whether they're coming from
16 Anaconda, Mosul, Camp Hope, they had to go through this BTC.
17 They would put everybody together on a bus, take them to
18 Baghdad International Airport, and then from there send them to
19 Dubai.

02:53 20 In this case, I didn't think it would be a good
21 idea to put Jamie through that. It's crowded. It's probably
22 uncomfortable. And in light of the allegation, we thought
23 maybe she would be more comfortable if we sent her straight to
24 Kuwait. So, what I did was I arranged for her to take a helo,
02:54 25 along with Jamie Armstrong, to BIAP, which is Baghdad

02:54 1 International Airport, and then from BIAP to Kuwait.

2 Q. Did you have to get approval from anyone for these special
3 arrangements to get Jamie home that way?

4 A. It required special approval from the project manager.

02:54 5 Q. And did Gabe Andino give you that approval?

6 A. Yes, he did.

7 Q. So, did Jamie leave by helicopter?

8 A. Yes.

9 Q. What was the role regarding body armor at Camp Hope during
02:54 10 travel?

11 A. It was mandatory. It was a military requirement for
12 everyone to wear a flak vest, helmet anytime you're on military
13 transport.

14 Q. Does that include the body armor, the breast plates?

02:54 15 A. Yes.

16 Q. What are those like?

17 A. It's heavy. It's uncomfortable. It's very heavy. But
18 you've got a piece of solid lead on your front, on your back,
19 and a helmet.

02:55 20 Q. Does the body armor hurt?

21 A. It can, yeah.

22 Q. And did you say that it's a military rule that you have to
23 wear that body armor in travel?

24 A. You have to wear it. Otherwise, you don't go.

02:55 25 Q. Do you know Charles Bortz?

02:55 1 A. I knew who he was. I didn't know him personally.

2 Q. KBR did pay for your ticket for you to come here today,
3 correct?

4 A. Yes.

02:55 5 Q. Has KBR or any attorneys involved in this paid for anything
6 else for your trip home?

7 A. No.

8 Q. How did your company feel about you taking leave?

9 A. That also required upper management approval because it is
02:55 10 personal leave.

11 Q. Did you have any problems with the firefighters at Camp
12 Hope?

13 A. No.

14 Q. Do you have any personal knowledge -- are you aware of any
02:56 15 retaliation at Camp Hope for employees complaining about
16 misconduct?

17 A. No.

18 Q. What about any of the other KBR camps?

19 A. No.

02:56 20 THE COURT: Was there a reason for your leaving KBR
21 and pursuing other employment?

22 THE WITNESS: In the world of American contracting,
23 it's about the bottom line, which is the money. And the
24 working conditions. I was offered another position in Qatar,
02:56 25 which was not a war zone. Money was the same. The living

02:56 1 conditions were a lot better. So, yeah.

2 THE COURT: Is it Qatar or is it Qatar? I've heard
3 both.

4 THE WITNESS: It can go either way. Qatar.

02:56 5 BY MS. CATES:

6 Q. In your opinion, were employees encouraged to complain
7 about misconduct at KBR?

8 A. Yes.

9 Q. In your opinion -- based on your experience, actually, were
02:56 10 those complaints taken seriously by HR?

11 A. Yes, they were.

12 MS. CATES: I think that's all my questions. Thank
13 you, Ms. Nichols.

14 THE COURT: All right. Do you -- before we get to
02:57 15 plaintiffs, does Mr. Bortz's counsel have any questions?

16 MR. McKINNEY: I might have one or two, your Honor.

17 THE COURT: Why don't you go ahead ask them now.

18 MR. McKINNEY: Just very briefly.

19 **CROSS-EXAMINATION**

02:57 20 BY MR. McKINNEY:

21 Q. I'm very sorry. I didn't catch your name.

22 A. Kimberly Nichols.

23 Q. Ms. Nichols, good afternoon.

24 A. Thank you.

02:57 25 Q. I'm Andrew McKinney. I represent Charles Bortz.

02:57 1 And you stayed, when you were in Barracks 2, in
2 Room 201, which is the same room that Jamie Jones stayed in?
3 A. That's correct.

02:57 4 Q. In evidence is the roster of Barracks 2, and it shows
5 various room numbers, both odd and even numbers. Can you help
6 us understand the layout of the second floor?
7 If you went down the hall, starting with your
8 room first, would it -- and if you were looking down the hall,
9 would your room be on the left or on the right?

02:58 10 A. When you went up to the second floor, and my room was at
11 the top of the stairs, when you turn right, go back down the
12 hall, my room would have been on the left-hand side.

13 Q. And your room was 201?
14 A. Yes.

02:58 15 Q. And the room right next door to you, what room number was
16 that?
17 A. To be honest with you, I don't remember if it was in
18 sequential order or if it was -- 202 was across the hall, 203
19 was next door. I don't remember.

02:58 20 Q. All right. Were there two ladies living across the hall
21 from you when you lived there in Barracks 2?
22 A. Honestly, I don't remember. I don't remember.

23 Q. You identified a couple of ladies in room, I believe, 202
24 when you were reading from the list?
02:58 25 A. Right.

02:58

1 Q. Do you recall that?

2 A. Yes.

3 Q. All right. Do you recall if 202 was across the hall from
4 you or next door to you?

02:59

5 A. No. I don't remember. Well, the room next to where I was,
6 was a male room. But I don't remember if that was Room 202 or
7 203.

8 Q. All right. Changing subjects entirely, do you happen to
9 know what kind of helicopter was sent by the military to

02:59

10 transport Ms. Jones?

11 A. I believe it was a Black Hawk.

12 Q. And have you, yourself, ridden on a Black Hawk helicopter?

13 A. Yes, I have.

14 Q. All right. What are the seating arrangements like in a
15 Black Hawk helicopter?

02:59

16 A. The two pilots are in the front. There is a row facing the
17 front with four seats facing the front of the helo. And then
18 in, I guess, the back seat, there are two rows facing each
19 other, with four seats on either side.

02:59

20 Q. And what kind of harness or seat belt does a passenger in a
21 Black Hawk helicopter wear?

22 A. It's a five-point harness that has to be fastened.

23 Q. Which may become important to our jury later on. Does the
24 harness come over a woman's chest in this fashion?

03:00

25 A. Yes, it does.

03:00 1 Q. The helicopter rides, are they nice and smooth? Are they
2 bumpy? Choppy? What's the story there?

3 A. They can be smooth or they can be -- as they maneuver
4 through the city, you've got an armed guard with a very large
03:00 5 gun. I'm not sure about what kind it was. If they're
6 maneuvering around or making military moves, it can be kind of
7 scary. But you're strapped in.

8 Q. I believe that's all I have. Thank you. Appreciate it.

9 A. Thank you.

03:00 10 THE COURT: Thank you.

11 Mr. Kelly.

12 MR. KELLY: Thank you, your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. KELLY:

03:00 15 Q. As you sit up there today, you don't know whether Ms. Jones
16 was raped or not, do you?

17 A. No, I do not.

18 Q. Ms. Nichols, you and I have never met?

19 A. No.

03:01 20 Q. And you know that I represent Jamie Leigh Jones?

21 A. Now I do.

22 Q. Okay. You know that Jamie Leigh Jones has brought a
23 lawsuit against Kellogg Brown & Root, right?

24 A. Yes.

03:01 25 Q. How long did you work for Kellogg Brown & Root?

03:01

1 A. From 2004 through September of 2007, took a year off, and
2 came back in February of 2009, and worked through September of
3 that same year.

03:01

4 Q. Now, it's true that most of the upper management at Fluor
5 are former upper management at Kellogg Brown & Root. Isn't
6 that true?

7 MS. CATES: Objection, your Honor, relevance and --

8 MR. KELLY: Goes to bias, your Honor.

9 THE COURT: I'm going to allow it.

03:01

10 BY MR. KELLY:

11 Q. That's true, isn't it?

12 THE COURT: If you know. If you don't know --

13 THE WITNESS: Yeah. Honestly, I'm not really sure.

14 BY MR. KELLY:

03:02

15 Q. Your direct supervisor --

16 A. Yes.

17 Q. -- is who?

18 A. My director supervisor?

19 Q. Yes.

03:02

20 A. Is Demita Palmer.

21 Q. Demita?

22 A. Yes.

23 Q. Did Demita also work for Kellogg Brown & Root?

24 A. Yes, she did.

03:02

25 Q. Who is Demita's direct supervisor?

03:02

1 A. Stephanie Fredericks.

2 Q. Did Stephanie Fredericks also work for Kellogg Brown &
3 Root?

4 A. Yes.

03:02

5 Q. How many people work in your department?

6 A. About 130.

7 Q. Of those 130, how many do you estimate came from Kellogg
8 Brown & Root?

9 A. About 60 percent.

03:02

10 Q. About 60 percent.

11 It's fair to say a good number of the Fluor
12 employees, at least the ones you're familiar with, are former
13 KBR employees. True?

14 A. Yes.

03:02

15 Q. Okay. So, when you said a few minutes ago that there's no
16 connection, that's not completely true, is it?

17 A. They're two entirely different corporations.

18 THE COURT: What line of work does Fluor pursue?

19 THE WITNESS: They do a little bit of everything. In
20 this case, it has to do with reconstruction.

03:03

21 THE COURT: Like building buildings?

22 THE WITNESS: Yes.

23 THE COURT: Okay.

24 BY MR. KELLY:

03:03

25 Q. You said that you went through training at Greenspoint?

03:03

1 A. Yes.

2 Q. Okay. And you -- I'm not trying to be insensitive, and I
3 apologize for what I have to ask. But how old were you when
4 you went through that training?

03:03

5 A. 52.

6 Q. And at the age of 52, had you had some significant
7 professional experience before that?

8 A. In working in a war zone? No.

9 Q. In working, period.

03:03

10 A. Yes.

11 Q. Okay. What was your experience?

12 THE COURT: I think we can agree that she was a lot
13 more experienced than Ms. Jones. I don't think there's any
14 mystery about that.

03:03

15 BY MR. KELLY:

16 Q. What was your education level?

17 A. High school.

18 Q. Okay. You had been a HR person for how long?

19 A. At KBR?

03:03

20 Q. Anywhere.

21 A. No. I had not been in HR before that.

22 Q. I see. So your first position in HR was when you went to
23 work for KBR?

24 A. That is correct.

03:04

25 Q. And was your first human resources position when you went

03:04

1 to Baghdad?

2 A. Yes.

3 Q. Which was in June of 2005?

4 A. It was in February.

03:04

5 Q. February of 2005?

6 A. No. 2004.

7 Q. Of 2004. I misunderstood.

8 And I think you indicated that the medical
9 facilities in Iraq were not full service; is that --

03:04

10 A. No. They were not.

11 Q. So, for instance, if you had a significant injury, you
12 probably wouldn't want to stay in-country to get that treated,
13 would you?

14 A. No.

03:04

15 Q. In fact, that was the whole purpose of an Army CASH, wasn't
16 it, to sort of just treat you and get you out?

17 A. That is correct.

18 Q. Okay. You also said that -- well, you said you came to KBR
19 with no formal training in human resources. Is that right?

03:04

20 A. That's correct.

21 Q. And I think you said in response to direct questioning that
22 KBR gave you no training in HR either. Is that right?

23 A. That's correct.

24 Q. Okay. It just came in from whatever experience you got
25 while you were working with Kellogg Brown & Root?

03:05

03:05 1 A. You brought the experience. Otherwise, they wouldn't have
2 hired you into the position.

3 Q. But didn't you just tell me you had no human resources
4 training?

03:05 5 A. That's correct.

6 Q. So, you were working in a position for which you had no
7 experience. Fair to say?

8 A. No.

9 THE COURT: Well, she's answered that she hadn't had
03:05 10 specific human resources experience. She had other work
11 experience. Is that fair?

12 THE WITNESS: That is correct.

13 BY MR. KELLY:

14 Q. You did say that sexual harassment investigations were not
03:05 15 your job?

16 A. That's correct.

17 Q. So, you wouldn't have investigated, for instance, the
18 sexual harassment or assault complaints of Teresa Westcott.
19 True?

03:05 20 A. I don't know that name.

21 MS. CATES: This is completely --

22 THE COURT: Let me -- did you ever investigate the
23 sexual harassment or sexual assault allegations of any person
24 in the employ of KBR?

03:05 25 THE WITNESS: No, I didn't.

03:05

1 MS. CATES: Thank you.

2 BY MR. KELLY:

3 Q. You knew that such allegations existed, though. True?

4 A. Yes.

03:05

5 Q. You described Room 201 in the barracks?

6 A. Yes.

7 Q. Okay. And I think --

8 MR. KELLY: Your Honor, may I approach?

9 THE COURT: You may, yes.

03:06

10 MR. KELLY: Your Honor, may I take a time-out and then
11 approach? I think I have them in the attorney room.

12 THE COURT: How long are you going to be?

13 MR. KELLY: Thirty seconds.

14 THE COURT: Okay.

03:07

15 *(Mr. Kelly leaves the courtroom briefly)*

16 MR. KELLY: *(Indicating.)*

17 MS. CATES: That's fine.

18 MS. VORPAHL: Yes.

19 BY MR. KELLY:

03:07

20 Q. I understand that those will be different blankets than you
21 would have used, but is that a fair and accurate depiction of
22 one of the corners of Room 201?

23 A. Not the way that we had the room configured. But yes, that
24 would be -- looks accurate.

03:07

25 Q. Okay. And is that a fair and accurate depiction of the

03:07

1 other set of bunk beds in the other corner?

2 A. Yes.

3 Q. Is it fair to say that the bunk beds that we're looking at
4 now would have been against the wall that did not go all the
5 way to the ceiling?

03:08

6 THE COURT: I don't think she can know that from this
7 photo.

8 THE WITNESS: I mean, there's -- on top of the bunk
9 bed. I'm not --

03:08

10 BY MR. KELLY:

11 Q. I understand you can't actually see it from the photograph.
12 But can you tell, based upon the configuration of the room,
13 whether that is the wall that would -- did not quite reached
14 the ceiling?

03:08

15 A. If that dark blue blanket is covering the window, then,
16 yes, that would be it. That would be the wall.

17 Q. Okay. Now, you said that the wall itself came -- and I
18 think you motioned (indicating). And it looked to be about
19 somewhere between 18 inches and 2 feet, to me, from the
20 ceiling. Is that right?

03:08

21 A. Yes.

22 Q. Okay. And at the time that you lived there, I think you
23 said there was a piece of plywood that went up?

24 A. Yes.

03:08

25 Q. Plywood is easy to knock down, true?

03:08

1 A. Yes.

2 Q. The people on the other side of that plywood from you were
3 men?

4 A. Yes.

03:08

5 Q. If that plywood was not there, that would not be very
6 comfortable for you as a woman, would it?

7 A. No, it probably -- no, it would not.

8 Q. You had been asked about the women who lived across the
9 hall from you a few minutes ago, right?

03:09

10 A. Yes.

11 Q. But you can't even remember that they lived there, can you?

12 A. No.

13 Q. You were asked a few questions about the trailer that
14 Ms. Jones was taken to after she reported this rape. You never
15 personally went to that trailer, did you?

03:09

16 A. No.

17 Q. You don't know what it looked like inside?

18 A. No.

19 Q. You don't know how it was equipped?

03:09

20 A. They were all equipped the same.

21 Q. They were all eventually equipped the same, true?

22 A. No, they were all equipped the same.

23 Q. They -- I'm sorry, I didn't mean to interrupt you.

24 A. No. Any room I'd ever been in all had the same.

03:09

25 Q. They didn't come into the country equipped, though, did

03:09

1 they?

2 A. No.

3 Q. Okay. So they eventually became equipped as you were used
4 to seeing them, true?

03:10

5 A. Yes.

6 Q. But they all had to start somewhere. Fair?

7 A. Yes.

8 Q. So as far as you know, when Jamie was in this room, it
9 didn't have a queen-size bed, but a cot. Fair.

03:10

10 MS. CATES: Your Honor, we already said she's not
11 testifying on this topic.

12 MR. KELLY: She did testify on this topic, your Honor.

13 THE COURT: I'll allow it.

14 BY MR. KELLY:

03:10

15 Q. As far as you know, when Jamie went into that trailer, it
16 didn't have a queen-size bed at all, but a cot?

17 A. It didn't have cots.

18 Q. Okay. Something like what we're looking at in the
19 photograph on the board. You don't know for sure one way or
20 the other, do you?

03:10

21 A. No.

22 Q. You also don't know if a TV had been installed, do you?

23 A. We all had TVs.

24 Q. Eventually they all got TVs, true?

03:10

25 A. By the time I got there in 2005, every hooch had cable TV.

03:10 1 Q. Once it was completely outfitted, that's true, right?

2 A. Yes.

3 Q. You mentioned that when Jamie first got into the country,
4 that she came through human resources, and you met her then?

03:11 5 A. Yes.

6 Q. When was that?

7 A. In July of 2005.

8 Q. Okay. Who was with her?

9 A. She came in with -- she came -- it was either Pete

03:11 10 Maldonado or -- I think it was Pete Maldonado.

11 Q. Pete Arroyo ring a bell?

12 A. No. Pete Arroyo was in operations.

13 Q. And who was Pete Maldonado?

14 A. He was another HR rep that in-processed our new hires.

03:11 15 Q. Okay. You said you knew of Charles Bortz. How did you
16 know of Charles Bortz?

17 A. He was another employee.

18 Q. Did you know all the employees in the Green Zone?

19 A. No.

03:11 20 Q. How did you know Charles?

21 A. I just knew who he was. As the travel person, I see -- I
22 saw every employee at that site a minimum of three times a
23 year. They had to come through the office for R and R.

24 Q. The -- I call them flak jacket. Is that what you called it
03:12 25 earlier, too? Called it a flak jacket?

03:12

1 A. Yes, it is.

2 Q. The flak jackets that you-all wore, the plates actually
3 came out, didn't they?

4 A. Yes.

03:12

5 Q. Made them a lot lighter, didn't it?

6 A. Yes.

7 Q. Made them hurt a lot less, didn't it?

8 A. Made them useless.

9 Q. But it was easier to wear, wasn't it?

03:12

10 THE COURT: Well, yeah, I mean -- yeah, I'm sure it
11 was.

12 BY MR. KELLY:

13 Q. All right. The -- we talked about the Black Hawk
14 helicopter that Jamie got on. Did you arrange for that Black
15 Hawk helicopter?

03:12

16 A. Yes.

17 Q. And you're certain that she flew out on a Black Hawk?

18 A. I wasn't there to actually see her leave, but I knew it was
19 a helo to take her from the Green Zone to BIAP.

03:13

20 Q. Were there other helicopters, in-country-oriented military
21 helicopters?

22 A. Yes.

23 Q. What were those called?

24 A. I don't remember what they were. They -- smaller aircraft
25 that the security people used to use.

03:13

03:13

1 Q. Did you refer to them as little birds?

2 A. That doesn't sound familiar.

3 Q. Do you know what a little bird is?

4 A. No.

03:13

5 Q. Have you ever heard a Black Hawk helicopter referred to as
6 a little bird?

7 A. No.

8 MR. KELLY: Your Honor, may I approach the witness?
9 Actually, I need to show this to opposing counsel first.

03:14

10 MR. MCKINNEY: There may be an authentication issue,
11 Judge, because she's not copied on this document.

12 MS. CATES: She's not copied on it at all, so I'm sure
13 she's never seen it.

14 MR. KELLY: That may be, but --

03:14

15 THE COURT: Hand it to Ms. Loewe.

16 MR. KELLY: -- but the party opponent is, your Honor.

17 Your Honor, it's a KBR document produced by them
18 in discovery. Gabe Andino was copied.

19 MS. CATES: At this point, everything is hearsay.

03:14

20 It's not authenticated.

21 THE COURT: Hold on just a second.

22 It does refer to little bird. But I don't think
23 this is the right witness to ask about it. I'm not going to
24 allow it.

03:15

25 BY MR. KELLY:

03:15 1 Q. You're certain that what you scheduled for Ms. Jones to fly
2 out on was a Black Hawk?

3 A. That's the arrangements I made.

4 Q. Okay. And I want to make sure I understand as well what
03:15 5 you said on direct. Did I understand you correctly that in the
6 world of American contracting, it's all about the bottom line?

7 A. Yes.

8 THE COURT: Okay. Thank you.

9 We don't have any redirect from anybody, do we?

03:15 10 MS. CATES: No, your Honor.

11 MR. McKINNEY: I have some questions.

12 THE COURT: Oh, are you sure?

13 MR. McKINNEY: Well, maybe I'm not so sure.

14 THE COURT: All right. Very quickly.

03:16 15 MR. McKINNEY: I try to accommodate Courts wherever I
16 can.

17 THE COURT: Okay. Go ahead. Go ahead.

18 **RE CROSS-EXAMINATION**

19 BY MR. McKINNEY:

03:16 20 Q. I'm really sorry about this.

21 It's been implied that you didn't have any
22 experience when you took your HR position with KBR. What was
23 your experience, if any, that qualified you for that position?

24 A. I was a contract administrator for a labor union here in
03:16 25 Houston.

03:16 1 Q. All right. And assume with me that Ms. Jones has testified
2 that the helicopter she rode in included a door gunner; that
3 is, a man with a pintle-mounted machine gun. Do you understand
4 what I'm talking about?

03:16 5 A. Yes.

6 Q. Are you aware of any military helicopter in service in Iraq
7 that was large enough to have a door gun, other than the Black
8 Hawk?

9 A. A Chinook.

03:17 10 Q. And that's -- a Chinook, for those ladies and gentlemen of
11 the jury, who may not know --

12 THE COURT: Ask her. Don't say.

13 BY MR. McKINNEY:

14 Q. A Chinook is such a large helicopter --

03:17 15 THE COURT: No. Can you describe what a Chinook is?

16 BY MR. McKINNEY:

17 Q. Describe a Chinook.

18 A. A Chinook is a huge helicopter, rotors on each end. It's a
19 troop carrier.

03:17 20 Q. Do you know what a Kiowa helicopter looks likes?

21 A. No, I don't. I'm not sure.

22 MR. McKINNEY: I'm moving on, Judge. Moving on. In
23 fact, I'm moving on over here.

24 THE COURT: Yeah. Safe travels to you.

03:17 25 Okay. All right. Thank you very much.

03:17 1 MR. KELLY: Well, your Honor, I have no further
2 questions.

3 THE COURT: No, you better not.

4 Thank you very much.

03:17 5 THE WITNESS: Thank you.

6 THE COURT: All right. We have another witness?

7 MR. ESTEFAN: We do, your Honor. Does the Court wish
8 to take a break before we start?

9 THE COURT: We work for the jury.

03:17 10 Do you-all want a break?

11 Okay. All rise for the jury.

12 *(Recess taken from 3:17 p.m. to 3:32 p.m.)*

13 *(Jury not present)*

03:32 14 THE COURT: I know some amount of sidebar is necessary
15 between counsel and client; but during that last witness, some
16 sidebar actually reached the jury. So, please keep your voices
17 low when you find it necessary to speak with one another.
18 Okay.

03:32 19 MR. McKINNEY: Judge, one quick matter, scheduling
20 matter. Charles Bortz is going to testify tomorrow. His
21 original flight plans would have had him in Houston at 2:25.
22 There's been a severe weather delay, plus he's had a change of
23 equipment and I'm not going to be able to even visit with my
24 client until about 7:00 this evening and I was wondering if we
03:33 25 could start at 9:30 tomorrow so I could have a little bit of

03:33 1 time to meet with my client before he gets on the witness
2 stand.

3 MR. HEDGES: I have a suspicion they may still be
4 going with this last witness tomorrow morning.

03:33 5 MR. ESTEFAN: We might be, but Mr. McKinney will have
6 to be here to do that. It doesn't matter to us when we start.

7 MR. MCKINNEY: It's entirely up to the Court. Simply
8 if I could have the time, I would like it.

9 THE COURT: Okay.

03:33 10 MR. ESTEFAN: It is his client and I --

11 THE COURT: Now, which witnesses are --

12 MR. ESTEFAN: We're going to be doing -- Jim Coin will
13 be our next witness, your Honor.

14 MR. HEDGES: He's a former KBR person who they're
03:33 15 calling as an adverse witness.

16 MR. ESTEFAN: And I suspect I'll be with him
17 45 minutes, maybe, a half hour.

18 THE COURT: That doesn't really solve Mr. McKinney's
19 problem.

03:33 20 MR. ESTEFAN: No, it doesn't.

21 THE COURT: He's got to meet with his client. And we
22 don't know for sure if he'll actually be here at 7:00, do we?

23 MR. MCKINNEY: We don't. I get updates, that's why
24 I'm --

03:33 25 THE COURT: I know.

03:33 1 MR. KELLY: Judge, I offered to prepare Mr. Bortz for
2 Mr. McKinney.

3 THE COURT: Right. I bet.

4 MR. KELLY: And he didn't accept. Just trying to be
03:33 5 helpful, Judge.

6 THE COURT: We'll start at 9:30. The reason we start
7 at 8:30 is the jury's request, but your reason is a good one.
8 And if before -- well --

9 MR. ESTEFAN: I will move as quickly as I can through
03:34 10 this witness so that we're not delayed by further --

11 THE COURT: That's not what matters, though. His
12 witness isn't on the ground yet.

13 MR. ESTEFAN: But I just don't want to compound the
14 problem by having Mr. Coin still on tomorrow morning when we
03:34 15 get started.

16 THE COURT: All right.

17 MR. KELLY: Remember, tomorrow is a long lunch, too,
18 for the jury.

19 MR. McKINNEY: Let's start at 9:00. We'll just get up
03:34 20 early.

21 THE COURT: All right.

22 *(Jury present)*

23 THE COURT: Members of the jury, please be seated.

24 Before I forget, ladies and gentlemen, we have a
03:35 25 travel delay. Mr. Bortz, one of the defendants, is going to be

03:35 1 on the stand tomorrow; but he's been delayed. So, we're going
2 to start at 9:00 again tomorrow just to accommodate his
3 schedule. It's hard in the best of weather to get the
4 out-of-town witnesses here on schedule. And, of course, this
03:35 5 summer has been anything but good weather.

6 So all right. Next witness, please.

7 MR. ESTEFAN: Thank you, your Honor. At this time
8 plaintiff would call Jim Coin to the stand. Probably James
9 Coin is more accurate.

03:35 10 THE COURT: All right. Mr. Coin, we're going to have
11 you up in this seat here. This is something for the defendants
12 to retrieve, I think. Yes, sir. Before you take your seat,
13 Mrs. Loewe will administer the oath.

14 MS. LOEWE: Do you solemnly swear the testimony you're
03:35 15 about to give in the matter now before the Court will be the
16 truth, the whole truth, and nothing but the truth?

17 THE WITNESS: I do.

18 THE COURT: That will be your seat. Please try to
19 speak directly into the mic.

03:36 20 THE WITNESS: Yes.

21 MS. VORPAHL: The easel is in the way. Could we maybe
22 flip that all back and get it out of the way?

23 MR. ESTEFAN: Is that all right, your Honor? May I
24 move this?

03:36 25 THE COURT: Yes, you may.

03:36 1 MR. ESTEFAN: Is that all right, Jo? Better?

2 MS. VORPAHL: Sure.

3 JAMES COIN, DULY SWORN, TESTIFIED:

4 DIRECT EXAMINATION

03:36 5 BY MR. ESTEFAN:

6 Q. Mr. Coin, you may need to adjust that microphone. It's
7 real hard to pick up your voice from there. There you go.

8 A. Just give me instructions as we go.

9 Q. Yes, sir. I will do the best I can, Mr. Coin.

03:36 10 Would you please state your name, sir.

11 A. My name is James Glen Coin.

12 Q. Mr. Coin, you've worked for KBR?

13 A. I have.

14 Q. And when did you begin, and how long have you worked -- did
03:36 15 you work for KBR?

16 A. I worked for KBR for approximately 31 years. I started in
17 1975 and retired in '07, 2007.

18 Q. Okay. What was your position with KBR when you retired,
19 sir?

03:36 20 A. When I retired, I was manager of employee relations for
21 government infrastructure.

22 Q. And I was going to ask this later; but since you keyed my
23 memory, you said "employee relations." I guess we need to
24 differentiate between human resources and employee relations.
03:37 25 What's the distinction between those two departments?

03:37

1 A. Well, in KBR, employee relations was a part of human
2 resources. I started out at KBR in the human resources
3 department, and it was just a little bit more specialized part
4 of the human resources organization as a whole.

03:37

5 Q. Yes, sir. So, would that be a specialized subdepartment
6 within human resources? Is that a fair characterization?

7 A. I think that's fair, yes.

8 Q. All right. But the entire 31 years that you spent employed
9 with KBR was in human resources?

03:38

10 A. That's correct.

11 Q. To be a KBR manager for employee relations, the company
12 required you and anyone else in that position to have a college
13 degree?

14 A. That's correct.

03:38

15 Q. And any college degree?

16 A. Yes.

17 Q. And your college degree, in fact, was in, I believe,
18 sociology and economics?

19 A. That's correct, liberal arts.

03:38

20 Q. Nothing in your degree relates to your position as employee
21 relations manager?

22 A. Correct.

23 Q. You took no classes related to human resources?

24 A. Not in college.

03:38

25 Q. All right, sir. At one time you were KBR's manager of

03:38 1 employee relations for the LOGCAP III project. Is that
2 correct, sir?

3 A. That's correct, sir.

4 Q. Your duties in that job were to, I believe, listen to
03:38 5 employee complaints and concerns?

6 A. Yes.

7 Q. Conduct investigations about them?

8 A. When necessary, correct.

9 Q. Interview witnesses?

03:39 10 A. Yes.

11 Q. Arrive at a resolution of the complaint?

12 A. Yes.

13 Q. And to give that information to the right people in
14 management at whichever site you were working?

03:39 15 A. That's correct.

16 Q. While you were the employee relations manager for
17 LOGCAP III from June of 2003 through October 2004, I believe --
18 does that sound right to you?

19 A. Those are the dates, yes, sir.

03:39 20 Q. You did around 200 investigations, true?

21 A. Approximately, yes.

22 Q. And of those 200, 24 or so were sexual harassment
23 investigations?

24 A. Approximately.

03:39 25 Q. Every case that was investigated was written up with a

03:39 1 recommendation and then it was discussed with management, true?
2 A. That's correct.
3 Q. And KBR had a central tracking system for these, right?
4 A. Yes, we did.
03:39 5 Q. Now, Mr. Kara Hall, you know Mr. Hall?
6 A. Yes, I do.
7 Q. Mr. Hall told us about him having a file cabinet with
8 manila folders and handwritten reports in these folders for
9 each complaint. Is this the database you're talking about?
03:40 10 A. That was -- that was a different database. That was a hard
11 copy database he's talking about.
12 Q. Okay. So, let's talk about your database that you just
13 mentioned before that. Is yours a computer database?
14 A. It was actually both. We had it -- we had it on computer,
03:40 15 and we also kept hard files or manila folders.
16 Q. Are these manila folders separate and apart from the ones
17 Mr. Hall was referencing? He had his manila folders. Did you
18 have separate manila folders for employee relations?
19 A. There were separate folders for HR and separate folders for
03:40 20 employee relations, that's correct.
21 Q. Yes, sir. And the hard -- this computer database that
22 you've told us about, now, that was only for employee
23 relations, true?
24 A. That was an employee relations tool that we used to keep
03:41 25 track of what we were doing and what had happened, yes, sir.

03:41

1 Q. Yes, sir. Not a human resources accessible thing, it was
2 an employee relations thing, true?

3 A. Correct.

03:41

4 Q. All right. Human resources people did investigations of
5 complaints when employee relations people weren't available to
6 do them. Is that correct?

7 A. That is correct, yes.

03:41

8 Q. All right. So, human resources investigations and reports
9 did not go into the computer database even though they're doing
10 the same kind of investigations employee relations did?

11 A. They were kept separate, that's correct.

12 Q. Yes, sir. So, if the human resources did an investigation,
13 that didn't go into your employee relations computer database?

14 A. Correct.

03:41

15 Q. All right. So, human resources manager at Camp Hope, for
16 example -- which you've been to a number of times?

17 A. I have.

18 Q. The human resources manager at Camp Hope didn't have a
19 written procedure for what to do when an employee made a
20 complaint, true?

03:42

21 A. I never saw a written procedure.

22 Q. Yes, sir.

23 A. I'm not saying that there wasn't one, but I never saw one.

03:42

24 Q. And the KBR human resources managers had no training on the
25 process for reporting harassment, did they?

03:42 1 A. Not quite. Yes, they did have training. I started out in
2 human resources as a manager, and I did investigations as an HR
3 manager before I went to employee relations.

03:42 4 Q. All right, sir. Have you ever testified that HR managers
5 weren't trained on the process for reporting harassments at
6 these sites?

7 A. Not to the best of my recollection.

8 Q. Okay.

9 MR. ESTEFAN: May I approach the witness, your Honor?

03:42 10 THE COURT: You may.

11 BY MR. ESTEFAN:

12 Q. Mr. Coin, I want to show you a page --

13 MR. ESTEFAN: For counsel, Page 69, Lines 8 through 12
14 of Mr. Coin's deposition.

03:43 15 BY MR. ESTEFAN:

16 Q. Mr. Coin, do you recall when we took your deposition at the
17 offices of KBR attorneys?

18 A. Yes, I do.

03:43 19 Q. And on Page 69, beginning on Line 8, there's a question
20 there and I'll just read that and then I'll ask you to read
21 your answer and you tell me if I've read that question
22 accurately, sir.

03:43 23 "Are you aware of any -- of any training that
24 existed while you were there before you retired that would
25 train the HR managers on the process for reporting harassment

03:43 1 at these sites?"

2 And your answer was?

3 A. My answer was: No.

4 Q. Okay, sir. Thank you. So, that means these KBR human
03:43 5 resources managers just had to use their prior experience about
6 what to do when a harassment complaint was made, true?

7 A. The question that you asked me talked about while I was
8 there in LOGCAP III on site, about the training for HR
9 managers; and I said I didn't know of any at that time --

03:44 10 Q. Right.

11 A. -- while I was there on site.

12 Q. Yes, sir. And you -- and so, that was in what year? You
13 were there in '04, right?

14 A. I was there in '04, correct.

03:44 15 Q. Was the last time you were there?

16 A. Yes, sir.

17 Q. So, up until '04, there was no training at all?

18 A. That I was aware of.

19 Q. That you were aware of?

03:44 20 A. On site.

21 Q. Yes, sir. And if there was no training that you were aware
22 of, that means that the KBR human resources managers had to use
23 their own -- their prior experience about what to do when a
24 harassment complaint was made, right?

03:44 25 A. They certainly had to use prior experience, yes.

03:44 1 Q. Yes, sir. The human resources hand had no way to know what
2 the employee relations hand was doing when it came to
3 harassment complaints, did it?

4 A. When I was contacted to conduct investigations, it was
03:45 5 normally through the human resources offices of whatever site I
6 was called to. So, they were always aware I was coming to do
7 an investigation with them or for them, yes.

8 Q. Right. But the databases were kept separately?

9 A. Databases were separate, that's correct.

03:45 10 Q. All right. And it's true the other way around, the
11 employee relations people had no way to know what the human
12 resources people had in their files either?

13 A. That's correct. I didn't look at their files unless it was
14 absolutely necessary.

03:45 15 Q. All right, sir. It is common in sexual harassment
16 situations that there are only two witnesses, right?

17 A. It is common, yes.

18 Q. You'd agree that most sexual harassers don't want other
19 witnesses around when they're harassing, right?

03:45 20 A. Most don't, but some do have witnesses.

21 Q. You have recommended terminating someone who is a sexual
22 harasser yourself, haven't you?

23 A. I have.

24 Q. And that was when a supervisor told his subordinate her job
03:46 25 would be in jeopardy if she did not go to bed with him, right?

03:46

1 A. That has happened, yes.

2 Q. And that kind of thing is a termination offense under KBR's
3 zero tolerance policy of workplace sexual harassment, true?

4 A. That was certainly a terminate-able offense, yes.

03:46

5 Q. Yes, sir. Inappropriate touching, likewise is a
6 termination offense?

7 A. That's correct, could be.

8 Q. It is -- it's always appropriate to take corrective action
9 against a harasser when a sexual harassment complaint has been

03:46

10 made, true?

11 A. Yes.

12 Q. It's never appropriate to take action against the person
13 making the complaint, is it?

14 A. No.

03:46

15 Q. You know that employees can be very reluctant to bring
16 workplace complaints, right?

17 A. Human nature is that employees can be reluctant. We
18 stressed over and over and over again that employees should
19 bring their concerns forward and -- and air them as quickly as
20 they become aware of the problems or concerns.

03:47

21 Q. Yes, sir. And you've investigated reports of retaliation
22 against people who have brought attention to workplace
23 harassment?

24 A. I have.

03:47

25 Q. And you found that there was retaliation?

03:47 1 A. In some cases, yes.

2 Q. And retaliation always involves some level of company
3 management, right?

4 A. Generally supervisor, yes, on up, yes.

03:47 5 Q. Which is company management?

6 A. Yes, correct.

7 Q. And that's because to retaliate against someone, you have
8 to have power over them, don't you?

9 A. That's correct.

03:47 10 Q. The whole point of retaliation is to keep others from
11 coming forward in the future by making an example of the one
12 who reported it?

13 A. That's correct, and that's why we had the policy against
14 that.

03:48 15 Q. And yet, you've seen it happen even in spite of the policy?

16 MS. VORPAHL: Your Honor, excuse me. I'm going to
17 object to this line of questioning inasmuch as there's not a
18 retaliation claim in this case.

19 THE COURT: There's not -- there's not, but it's part
03:48 20 of the case nonetheless. I'm going to allow it.

21 BY MR. ESTEFAN:

22 Q. So, in spite of the policy, Mr. Coin, the zero tolerance
23 policy that KBR had, you've seen it happen?

24 A. People do break rules, yes, they do.

03:48 25 Q. Yes, sir. If a sexual harassment or sexual assault

03:48

1 complaint is investigated in a way that favors the aggressor
2 and doesn't favor the victim, that would be wrong, wouldn't it?

3 A. What do you mean by "favor"?

03:48

4 Q. Well, if the aggressor is, for example, let free to roam
5 around still after the investigation and the victim is
6 isolated, that favors the aggressor, doesn't it?

7 A. In your -- in your scenario, yes, it does.

8 Q. That would be wrong to do that, wouldn't it?

9 A. I couldn't see a reason for doing that.

03:49

10 Q. But it would be wrong because you can't see a reason,
11 right?

12 A. Correct.

13 Q. During your time in the LOGCAP III from June of '03, I
14 believe you said, to October of '04?

03:49

15 A. Yes, sir.

16 Q. You were at Camp Hope every couple of weeks for a year?

17 A. I was in and out, yes, sir, in and out for a couple of
18 weeks -- couple days every couple three weeks, yes, sir.

19 Q. Yes, sir. And you would only go to the camp when someone
20 called you?

03:49

21 A. Well, Camp Hope was an excellent place to make connections
22 with other locations in the country of Iraq. So, I was in and
23 out of Camp Hope not only to do investigations but also to
24 travel to other parts of the country, pick up a convoy or
25 something like that to go someplace else.

03:49

03:49 1 Q. Yes, sir. But that wasn't your reason for going every
2 other week or every couple of weeks for a year, not just to
3 make connections. You were being called to Camp Hope --

4 A. No, I've done investigations there, that's correct.

03:50 5 Q. Lots of them?

6 A. I don't know the number but several.

7 THE COURT: Between five and ten or between one and
8 five?

9 THE WITNESS: Oh, between 10 and 20 probably, your
03:50 10 Honor.

11 THE COURT: Okay. Thank you.

12 BY MR. ESTEFAN:

13 Q. And you were called to Camp Hope to investigate harassment
14 claims?

03:50 15 A. Probably, yes.

16 Q. There was more harassment overseas than there was in
17 Houston at KBR. Isn't that true?

18 A. Well, there was certainly more complaints overseas than
19 there were at KBR in Houston, yes.

03:50 20 THE COURT: And why is that? Is that because the
21 living arrangements are so intense?

22 THE WITNESS: Yes, sir. It's a 24/7 job in a war zone
23 and people lived and slept within feet of each other. You
24 couldn't get away. Just a tremendous amount of stress on
03:51 25 people.

03:51

1

THE COURT: Was alcohol abuse a factor?

2

THE WITNESS: I'm only aware of one site that allowed alcohol abuse -- or alcohol abuse -- alcohol.

4

THE COURT: And what site is that?

03:51

5

THE WITNESS: That was the Camp Hope area.

6

THE COURT: So, it was sui generis in that respect?

7

THE WITNESS: I never saw it anyplace else that we had in the 65 locations.

9

THE COURT: Did you have disproportionate reports from Camp Hope? Not --

03:51

10

11

THE WITNESS: I never investigated an alcohol complaint at Camp Hope.

13

THE COURT: Okay.

14

MR. ESTEFAN: I think your Honor was reading my outline. Those were some of the questions I was going to ask, Judge. Thank you.

03:51

15

16

17

THE COURT: Okay.

18

BY MR. ESTEFAN:

19

Q. Overseas camps run by KBR are volatile, aren't they?

03:52

20

21

A. They were -- they were dangerous from the fact that they were in a war zone, yes, sir.

22

Q. Yes, sir. And there's some other reasons, too, like there was new employees coming in and out frequently?

23

24

A. New employees all the time, yes.

03:52

25

Q. Right. And many of them are young, true?

03:52 1 A. There were young employees. I saw people from the teens to
2 their seventies.

3 Q. Yes, sir.

4 A. Yes.

03:52 5 Q. And they were trying to learn their way around the camp?

6 A. Yes.

7 Q. Of course, then we also had the alcohol that the Court
8 mentioned. All true, right?

9 A. At that site, yes.

03:52 10 Q. At that site. And, in fact, there was a thing called
11 General Order Number 1 at many of the KBR facilities overseas.
12 Are you --

13 A. At every KBR facility overseas, yes, sir.

14 Q. Yes, sir. And you're familiar with what General Order
03:52 15 Number 1 is?

16 A. I'm generally familiar with General Order Number 1.

17 Q. What is General Order Number 1, sir?

18 A. No alcohol.

19 Q. No alcohol?

03:52 20 A. Correct.

21 Q. And in Camp Hope, during the time you were there, between
22 '03 and '04 and even after that, alcohol was allowed -- it was
23 okay by KBR policy to drink alcohol?

24 A. It was approved by the government for alcohol consumption
03:53 25 because of the State Department and all the people that were

03:53 1 around Camp Hope.

2 Q. Yes, sir.

3 A. And so, KBR followed along with the client.

4 Q. The client being the Department of State?

03:53 5 A. Correct.

6 Q. At Camp Hope only?

7 A. Correct.

8 Q. And so, the person who could make the decision about
9 alcohol, how high up the chain would that go? Would that be
03:53 10 the project manager?

11 A. You know, I can only -- I can only guess, but I would
12 suspect it would probably have been the vice-president of
13 LOGCAP III, who was there in Baghdad.

14 Q. So, that would be even above the project manager?

03:53 15 A. I suspect, yes.

16 Q. Okay. And the project manager for Camp Hope, was that
17 Mr. Andino when you were there in '04; or did he come after
18 you?

19 THE COURT: If you know.

03:54 20 A. I don't know. It was sometime '04-'05, but I can't
21 remember.

22 BY MR. ESTEFAN:

23 Q. Yes, sir. I'm not trying to trick you.

24 A. I understand. I understand.

03:54 25 Q. KBR's sexual harassment policies include policies against

03:54 1 sexual assault, true?

2 A. If I recall the policy, it doesn't say "sexual assault";
3 but certainly assault is against company policy, yes.

4 Q. Well, yes, sir. I mean, sexual assault is a -- an
03:54 5 extension of sexual harassment. I mean, it's a type of sexual
6 harassment, isn't it?

7 A. In the extreme form, you might say, yes.

8 Q. Yes, sir. And you have no training in sexual assault
9 investigation?

03:54 10 A. That's correct.

11 Q. And you've never done a sexual assault investigation or
12 made sure one was done, have you?

13 A. Not in 31 years.

14 Q. Right. Yet there's not a single KBR document, e-mail,
03:55 15 note, or policy that you know of from your 31 years at KBR that
16 says: Do not investigate sexual assault complaints.

17 Is that right?

18 A. Who does not? I'm sorry. I missed that part.

19 Q. You have nothing that tells you: Don't investigate
03:55 20 assaults?

21 THE COURT: There never was a policy on the part of
22 KBR?

23 THE WITNESS: I've never seen a written policy that
24 said that HR or employee relations shouldn't investigate.

03:55 25 THE COURT: Was it -- leaving aside whether it was

03:55 1 written down, was there a de facto policy that it shouldn't be
2 looked into?

3 THE WITNESS: You know, over the 31 years that I
4 worked in human resources and in early in the Eighties,
03:55 5 continuing on, meeting with legal department and HR and
6 security over just -- over just the years, it was -- it was --
7 I guess it was understood that that was something that security
8 did and HR didn't do.

9 THE COURT: I see.

03:56 10 BY MR. ESTEFAN:

11 Q. You do not know, Mr. Coin, if having non-consensual sex
12 with a female employee falls in KBR's definition of "sexual
13 harassment." Isn't that right?

14 A. That non-consensual sex doesn't fall into the harassment
03:56 15 policy?

16 Q. Yes, sir. You don't know if non-consensual sex with a
17 female falls into KBR's definition of "sexual harassment"?

18 A. Are you --

19 THE COURT: I think he has already said that sexual
03:56 20 assault is an extreme form of sexual harassment. Haven't you
21 said that?

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay.

24 MR. ESTEFAN: And I was asking for his knowledge of
03:56 25 KBR's definition, your Honor, on that point.

03:56 1 THE COURT: You mean he had a different understanding
2 than KBR did? Is that what you are saying?

3 MR. ESTEFAN: That's the question.

4 THE COURT: Okay. Did you have a different
03:56 5 understanding on that particular definitional issue than did
6 upper management at KBR?

7 THE WITNESS: I don't know. I can only speak about my
8 understanding of it.

9 BY MR. ESTEFAN:

03:57 10 Q. Okay. The whole point of doing the investigation and
11 making recommendations, as you've talked about, is employee
12 safety, true?

13 A. Yes.

14 Q. You don't think it's your obligation, as the employee
03:57 15 relations manager over the entire LOGCAP III project, to know
16 what happens to employees under KBR's policies if someone is
17 sexually assaulted, do you?

18 A. I am certain that if an assault occurs, that it's reported
19 to the appropriate organization and that an investigation would
03:57 20 be done, yes, even though I may not do it.

21 Q. Yes, sir. Right. And if you're not involved in the
22 investigation, you don't have a need to -- you might not have a
23 need to know?

24 A. I probably would never know, that's correct.

03:57 25 Q. Yes, sir. Is there any appropriate reason to confine a

03:58 1 victim of harassment to his or her quarters against his or her
2 will?

3 A. I can't think of an appropriate reason to do that.

4 Q. You know that KBR has an arbitration policy?

03:58 5 A. Yes, I do.

6 Q. And that's kept confidential. Isn't that true?

7 A. Not really.

8 Q. The decisions that come from the arbitration are kept
9 confidential. You know that, right?

03:58 10 A. The decisions are written decisions, and they're given to
11 both parties at the end of the arbitration.

12 Q. Right. But they're not done in a public forum like a
13 courtroom?

14 A. They're done in a -- generally a judge's chamber kind of
03:58 15 situation, yes.

16 Q. Closed door thing, true?

17 THE COURT: If a bystander, if someone without any
18 direct personal interest in the case wanted to attend an
19 arbitration, could he or she?

03:59 20 THE WITNESS: The arbitrator makes that decision. And
21 I don't ever remember seeing that.

22 THE COURT: Okay. Going back to the written decision,
23 it's handed to the parties respectively?

24 THE WITNESS: That's correct.

03:59 25 THE COURT: Is there any limitation on the party's

03:59 1 right to disseminate it further?

2 THE WITNESS: None.

3 BY MR. ESTEFAN:

4 Q. So, if it's kept between the parties there, we -- the
03:59 5 public, all of us, we can't find out how many harassment or
6 assault claims have ever been brought, can we, if they're
7 arbitrated?

8 A. Well, since I'm not in the legal department, I don't know
9 quite the appropriate dissemination process or who can get
03:59 10 access to those kinds of things. So, I'd just be speaking from
11 hearsay without -- without good knowledge really.

12 Q. Yes, sir, I appreciate that.

13 MR. ESTEFAN: I'll pass the witness, your Honor.

14 THE COURT: Thank you.

04:00 15 Okay. Further inquiry of this witness?

16 MS. VORPAHL: Yes, your Honor. May I approach?

17 THE COURT: You may.

18 MS. VORPAHL: All right. May it please the Court?

19 **CROSS-EXAMINATION**

04:00 20 BY MS. VORPAHL:

21 Q. Mr. Coin, will you tell the jury in a hundred words or less
22 about your work background? And perhaps even just a bit about
23 your educational background.

24 A. I graduated from McNeese State University in Louisiana in
04:01 25 1967, went immediately into the military, Vietnam era kind of

04:01 1 thing obviously. After I got out of the military, I came to
2 Houston and went to work for a couple of small organizations,
3 Associated General Contractors of America. Had the opportunity
4 to work with some, at that time, Brown & Root management
04:01 5 people. And in 1975 they offered me an opportunity, and I was
6 happy to take it.

7 I went to work in the craft construction
8 organization, looking for and hiring construction workers, pipe
9 fitters, welders, carpenters, individuals like that. Did that
04:01 10 for about three or so years and moved into what we called at
11 that time professional technical administrative recruiting for
12 engineers, accounting people, project management, et cetera.
13 And did that for a few years, became the assistant manager or a
14 front-line supervisor.

04:02 15 Eventually, mid to late Eighties, became a -- the
16 manager of professional technical administrative recruiting for
17 KBR out on the facilities on Bellaire Boulevard. And then
18 probably mid Nineties, I got the opportunity to move into that
19 little specialized part of HR, which was the employee relations
04:02 20 group.

21 Throughout the years at KBR, certainly after I
22 became a manager, I had done investigations into employee
23 complaints, went to a number of seminars and training to learn
24 how to do that kind of thing. All HR manager at KBR did that
04:03 25 sort of thing, went to those classes. So, we learned -- we

04:03 1 learned not only the practical kind of thing we needed to do to
2 run an HR department but also to talk and work with employees
3 that had questions, concerns, problems, which everybody always
4 does in an organization.

04:03 5 And so, in 19 -- I guess the end of the century
6 in 2000, I moved in to the employee relations organization with
7 government services and then in 2003 was assigned --

8 volunteered, actually, to go to the Middle East and be the
9 employee relations manager for the Brown & Root services. And

04:04 10 so, I was responsible for all the countries in the LOGCAP III
11 area of expertise, which included Uzbekistan, Afghanistan,
12 Djibouti, Jordan, Kuwait, Iraq, Republic of Georgia. Then in
13 2004, after my wife told me to come home, I went back to

14 Houston, came back to Houston and worked in the employee
04:04 15 relations department as the manager for government services.
16 And then retired in 2007.

17 BY MS. VORPAHL:

18 Q. Now, you described -- you described human resources and
19 employee relations; and you said that when you were in the
04:04 20 Middle East working in employee relations, you were responsible
21 for a number of different areas. Was that your testimony?

22 A. Correct.

23 Q. Okay. Were there human resources people on the ground at
24 each of these locations?

04:05 25 A. Yes, there were.

04:05 1 Q. All right. And then could you describe for the jury what
2 your function was in addition to those human resources people
3 who were on the ground at each camp?

04:05 4 A. Yes. As employee relations, my function was to assist
5 human resources, managers who had employees come to them with
6 questions, concerns, or problems. HR, like every other group
7 of people in -- on that project, 12-hour days, 14-hour days,
8 16-hour days were the norm. We worked a scheduled 84-hour work
9 week, which was dramatic. And there were a lot of things going
04:05 10 on.

11 So, I was there as part of KBR's organization to
12 ensure that when an employee had a problem, not only -- not
13 only could they get help but they could get resolution to
14 whatever problem, concern that was. HR did a lot of it; but
04:06 15 when it was particularly perhaps delicate sometimes or when it
16 was a little bit more complicated and HR people raised their
17 hand and said, "Jim, would you come and help us out," then I
18 was able to do that.

19 So, I spent my year and a half, however long it
04:06 20 was, in that theater of operation traveling around the country.
21 I was on the move. I was going somewhere every two or three or
22 four days, convoys, airplanes, whatever, moving around the
23 country at all the sites.

24 Q. Was that travel process dangerous to you?

04:06 25 A. Yes. That's why my wife told me to come home.

04:06 1 THE COURT: Are most of the married couples, one of
2 whom is working in the area as you've referred -- to which
3 you've referred, living with one spouse in the United States
4 and one in the theater of operations; or is it more common to
04:07 5 bring the spouse along?

6 THE WITNESS: I don't -- Judge, I wouldn't say it's
7 common to bring the spouse along because the spouse, whomever
8 that was, male or female, had to have some sort of usable skill
9 that we were looking for.

04:07 10 THE COURT: So, you weren't -- the company did not
11 encourage or perhaps even allow non-working spouses to
12 accompany the employee?

13 THE WITNESS: No. There were -- well, non-working?
14 No. You just couldn't go there on vacation, no.

04:07 15 THE COURT: No, that's not quite what I am asking.
16 But in a lot of marriages, one spouse works and the other does
17 not.

18 THE WITNESS: In the case where -- the cases where I
19 recall employees working for us that were married, each spouse
04:08 20 had a defined job.

21 THE COURT: And if one did not have a job with KBR,
22 then that spouse remained back in the United States normally?

23 THE WITNESS: Correct.

24 THE COURT: Okay.

04:08 25 BY MS. VORPAHL:

04:08 1 Q. Mr. Coin, did you conduct training at the Greenspoint
2 location where KBR employees came before they were deployed to
3 other points overseas?

4 A. Yes, I did.

04:08 5 Q. Do you recall on how many occasions you might have
6 conducted that training?

7 A. It was weekly. It started in late 2002. I handed it over
8 to someone in June of '03. When I came back in October of '04,
9 I picked it up again. And I was at Greenspoint every week
04:08 10 unless I was on vacation, which didn't happen very often.

11 So --

12 Q. Could we --

13 A. -- yes.

14 Q. Thank you.

04:09 15 MS. VORPAHL: Could we put up Exhibit -- let's see --
16 Joint Exhibit 130, the first page, please?

17 I've got the wrong exhibit. Your Honor, can you
18 give me just one moment?

19 THE COURT: Sure.

04:09 20 MS. VORPAHL: I'll move on, and we'll come back to
21 this exhibit.

22 THE COURT: Okay.

23 BY MS. VORPAHL:

24 Q. I want to ask you to look at another exhibit, Joint
04:09 25 Exhibit 11, if you would, please. And it's going to appear on

04:09 1 the screen.

2 Do you recognize this format? Do you know what
3 this is?

4 A. Yes, I do.

04:10 5 Q. Can you tell the jury what this would be?

6 A. Well, every week, when I conducted training out at the
7 processing center, I passed out a number of these blank forms
8 that, while I was giving the presentation, employees would fill
9 out and pass down to the next individual. And at the end of
04:10 10 the class, I would pick those up. It was an indication --
11 keeping track of the numbers of employees and who went through
12 the orientation process, certainly for the harassment-free
13 workplace training. And I put the date and my name because, on
14 the rare occasion there was somebody else that did it, I just
04:10 15 wanted to document that information.

16 Q. All right. If you'll take a look at the Number 7 name
17 there, can you tell me who that is, if you can read it, please?

18 A. Charles B-A-R-T-Z.

19 Q. Might it be B-O-R-T-Z?

04:11 20 A. Could be.

21 Q. Okay. So, that would indicate that on March 23rd of 2005,
22 someone named Charles Bortz or Charles Bartz with a job title
23 that he said was firefighter took your harassment-free
24 workplace course?

04:11 25 A. That's correct.

04:11 1 Q. Okay. About how long was that training each week?

2 A. It lasted about an hour to an hour and 15 minutes.

3 Q. All right.

4 MS. VORPAHL: If we could have Joint Exhibit 37,
04:11 5 please? And if we could turn to Page 4511 and if you -- thank
6 you. It's redacted.

7 BY MS. VORPAHL:

8 Q. If you could take a look at the sixth name there and tell
9 me the date on which you conducted this training. Was it
04:12 10 July 13th of 2005?

11 A. That's correct.

12 Q. And it would have been the same kind of training?

13 A. Yes, ma'am.

14 Q. And the seventh name there -- I'm sorry, the sixth name
04:12 15 there is who?

16 A. Jamie Jones.

17 Q. With a job title of IT?

18 A. That's correct.

19 Q. Would that indicate that on July 13th of 2005, you taught
04:12 20 the harassment-free workplace course to Jamie Jones?

21 A. Yes, ma'am.

22 Q. Okay. Now, tell me a little bit about the presentation
23 that you would give on these occasions.

24 A. Okay. Let me --

04:12 25 Q. Just describe it for us.

04:12 1 A. Yes, ma'am. Yes, ma'am.

2 We, HR and ER at KBR and Brown & Root, had, for a
3 number of years, given a harassment-free workplace training
4 seminar, I guess you would call it, or our class. We had -- we
04:13 5 had done that -- I had done that on many occasions out at our
6 construction sites on the Ship Channel and various places
7 around the country where we had employees. And as time moved
8 on and we added new parts, like dispute resolution and EAP
9 program and those kind of things, we just amplified or modified
04:13 10 or changed our training to include those new parts. But as a
11 company, we've done that for many years, a number of years.
12 And I was -- I wasn't the only one that did it. The
13 HR managers at the various sites would do that for their people
14 if I couldn't get to Hong Kong, Georgia, wherever it was that
04:14 15 we needed the training.

16 Q. And did you have a PowerPoint presentation that went along
17 with it?

18 A. I did. I did.

19 Q. All right. And that's what I am looking for the exhibit
04:14 20 number to. And we'll get on to that in a moment as well.

21 I would like to look now -- I'd like to move on
22 now to Joint Exhibit 136.

23 MS. VORPAHL: And if I could approach the witness,
24 your Honor, with a paper copy of this exhibit?

04:14 25 THE COURT: You may.

04:14 1 BY MS. VORPAHL:

2 Q. And I'm going to also talk about Joint Exhibit 139 after
3 that.

04:14 4 MS. VORPAHL: So, if I could approach the witness with
5 both of these things?

6 THE COURT: Yes, you may.

7 MS. VORPAHL: Thank you.

8 BY MS. VORPAHL:

04:15 9 Q. Mr. Coin, I indicated the numbers at the bottom so you
10 could use that to refer to them. I'm handing you what has been
11 marked Joint 136 and Joint 139.

12 MS. VORPAHL: And, Stephanie, if I could get those --
13 have those out of -- no, that's not -- yes, this is it. Thank
14 you. Thank you very much.

04:15 15 MS. CATES: No problem.

16 BY MS. VORPAHL:

17 Q. Joint Exhibit 136, can you describe what that is?

04:15 18 A. The cover sheet I'm looking at is -- it looks like the
19 cover to the brochure that dispute resolution developed and
20 handed to employees or gave out to employees.

04:16 21 Q. All right. And I think that's probably the US version. If
22 you'll take a look at 139 and see if I'm right. I think that
23 that's a smaller brochure, first of all -- and you can correct
24 me if I'm wrong -- but it also, I believe, indicates that it is
25 LOGCAP III and gives an APO address?

04:16 1 A. Yes, ma'am. The document joint -- or 139 is a little
2 trifold. It was folded up kind of like this so that an
3 employee could have that with them where -- wherever they were
4 transferred, wherever they went on LOGCAP III. So, instead of
04:16 5 having a big old thick one of these, they could have one of
6 these handy-dandies and pull it out whenever they needed to, to
7 remind themselves of what had been said during the orientation.
8 Q. Did -- do Exhibit 136 -- Joint Exhibit 136 and Joint
9 Exhibit 139 describe the same basic dispute resolution concept?

04:17 10 A. Yes. 139 is a little bit more of a summary. 136 is the
11 long, complete version, looks like.

12 Q. All right. And were these brochures available to all
13 employees?

14 A. Yes.

04:17 15 Q. All right. Do they describe -- do they accurately describe
16 KBR's dispute resolution program?

17 A. Yeah, I think they do. I think they do.

18 Q. All right.

19 A. Certainly it was there to get people started.

04:18 20 Q. You may have already answered this; but why did KBR have
21 both HR, human resources, and employee relations?

22 A. Sometime during the evolution during the Eighties and
23 Nineties when I was in HR and I did occasional investigations
24 with the little group that I worked with, and all HR managers
04:18 25 were doing those kinds of things, the company -- the company, I

0 4 : 1 8 1 guess, had stronger and stronger feelings about making sure
2 that employees had someone hear what they were saying and no
3 one -- you know, if you work for an organization and you feel
4 like you don't have anybody to talk to about what your concerns
0 4 : 1 8 5 are or problems are, then people keep it bottled up, they get
6 angry, they get mad, they quit their jobs, you know, all kinds
7 of things can happen.

8 And so, the company, I guess, as time moved
9 forward, felt that they needed some vehicles to help employees
0 4 : 1 9 10 stay good employees. We wanted to keep people working for us.
11 And if you got -- for some reason got angry or didn't feel like
12 you were being heard, then what do you normally do? You know,
13 you quit your job and go somewhere else. And people -- skilled
14 people are hard to find. So, we tried to hold on to those
0 4 : 1 9 15 individuals.

16 Then about the early Nineties, when the dispute
17 resolution program was adopted by Brown & Root, it became, I
18 think, even more important to kind of add the employee
19 relations function to the dispute resolution just to make more
0 4 : 1 9 20 arrows in the quiver, you know, just more things that employees
21 could take advantage of. So, just a slow growth, I guess, an
22 evolution kind of thing.

23 Q. What were some of the other things besides human resources
24 and employee relations that an employee could take advantage
0 4 : 2 0 25 of, let's say, in 2005?

04:20 1 A. Well, one of the big things I thought was the employee
2 assistance program, EAP, which were trained counselors to help
3 people who had -- not only here in the States but also
4 certainly deployed in a war zone, help people who had problems,
04:20 5 financial, marital problems they were dealing with, divorce, or
6 the kids at home were -- you know, were doing something, things
7 that -- things that were happening to employees just in the
8 stress of the job over there, you know. Someone gets their
9 truck rocketed and mortared, they might need to talk to
04:21 10 somebody about that.

11 And so, we had EAP counselors at a number of the
12 sites that could talk to people when something was going on.
13 And what we didn't want to have happen and was, you know, a
14 good employee working, something was going on at home with the
04:21 15 family and they felt like they had to quit their job and go
16 home and take care of that and they might not be able to come
17 back any time soon. So, we tried to help employees get over
18 some of those rough patches, whether it be with families or
19 financial or drugs or whatever.

04:21 20 Q. Were there also hotlines available if employees did not
21 want to talk to somebody in human resources or employee
22 relations?

23 A. Yes. Gosh, there were -- man, there's posters -- there
24 were posters there and there's still posters now for
04:21 25 employees -- they're posted in HR areas and in common areas,

04:22 1 DFAC sometimes -- indicating that they could call EAP, DRP,
2 human resources, employee relations. There was even a
3 Halliburton hotline they could use if they wished to.

04:22 4 And then they could use the open door policy,
5 which was -- I thought was one of the really good parts of the
6 dispute resolution process. "Open door" means that we
7 encouraged employees, if they had something going on, to go
8 talk to the people involved. If you had a problem with your
9 supervisor, go talk to your supervisor. We encourage people to
04:22 10 do that kind of thing. If you were -- if your supervisor was
11 the problem, then go talk to their boss or somebody else in
12 management or ER or HR or -- we really -- we really encouraged
13 employees to use the open door. And that was a historic thing.
14 When I first came to work at Brown & Root in '75, that was one
04:23 15 of the things that kind of I noticed, that that was really
16 encouraged.

17 MS. VORPAHL: Could we put up Exhibit 36 now?

18 And may I approach the witness so that we don't
19 have to go through this whole thing on the screen?

04:23 20 THE COURT: You may.

21 BY MS. VORPAHL:

22 Q. Mr. Coin, I'm going to show you what has been marked as
23 Joint Exhibit 36 and ask you if that is the presentation that
24 you would use during the period that you described that you
04:23 25 conducted the training, the employee relations anti-harassment

04:23

1 training at Greenspoint?

2 A. Let me look to make sure that that's all -- all it is, if
3 you don't mind.

4 Q. No. I want you to take your time.

04:24

5 A. Yes, this -- oh, there it is. Okay. This looks like the
6 training that I gave.

7 Q. All right.

8 A. Now, this cover sheet I didn't use; but this is my first
9 slide.

04:24

10 Q. All right. So, the first -- so, the very first page of
11 that you might not have used, but doesn't it say just about the
12 same thing?

13 A. Yeah, it says -- yeah, it does.

14 MS. VORPAHL: I believe those are all the questions I
15 have at this time, your Honor.

04:24

16 THE COURT: Okay. Thank you.

17 Anything further?

18 MR. MCKINNEY: I don't have anything, Judge.

19 THE COURT: Okay. Thank you.

04:24

20 Any redirect?

21 MR. ESTEFAN: Briefly, Judge, and I mean it when I say
22 it.

23 THE COURT: Okay.

24 ///

04:24

25 ///

REDIRECT EXAMINATION

BY MR. ESTEFAN:

Q. Mr. Coin, do you still have 137, joint exhibit? I'm sorry, is it 136? Is that the one Ms. Vorpahl had up there?

MS. VORPAHL: I think I gave him my only copy.

THE WITNESS: Is it this one here?

A. Yes, sir, I still have that.

BY MR. ESTEFAN:

Q. Yes, sir, that's the one. If you would turn -- you see in the bottom right-hand corner there where it's got Bates stamp numbers KBR 00 -- could you please turn to page --

A. I do.

Q. Could you please turn to 002758?

A. Is that the one that says, "Who is covered"?

Q. Yes, sir --

A. Yes.

Q. -- at the top of the page.

A. Yes.

Q. And this is the options for resolving problems at work and we went all through that and these options that you talked about with Ms. Vorpahl about open door policy and internal conference, things like that?

A. Yes, sir.

Q. In the little box at the bottom there, do you see the next to the last sentence?

04:26 1 A. Is that the one that if an employee files --

2 Q. Yes, sir.

3 A. Let me read that.

4 Q. Yes, sir.

04:26 5 A. I do see it. Let me read it.

6 Yes, I've read it.

7 Q. Okay. And I'll read it, and I just want you to make sure

8 I'm reading it right. It says: If an employee files a lawsuit
9 against Halliburton or any of the parties listed above,

04:26 10 Halliburton will ask the Court to dismiss the lawsuit and refer
11 it to the dispute resolution program.

12 Do you see that, sir?

13 A. I certainly do.

14 Q. Can you think of any reason why Halliburton would not want
04:26 15 an employee dispute in front of a jury?

16 A. Length of time between the original concern and the jury
17 trial would probably be my best guess.

18 Q. And the tradeoff, I suppose, for all that speed is that
19 it's final and binding when it goes through the arbitration
04:27 20 process, isn't it?

21 A. That's what I remember reading, yes.

22 Q. And it's also secret?

23 THE COURT: Well, now, he's already testified about
24 that. Do you have a specific questions you want to ask him
04:27 25 about secrecy?

04:27

1 MR. ESTEFAN: Well, I do.

2 BY MR. ESTEFAN:

3 Q. The secrecy is never disclosed in any of the training you
4 gave?

04:27

5 THE COURT: Wait a minute. He has testified that as
6 far as he knows, it's not secret. A bystander could not show
7 up and ask to be accommodated at the arbitration; but as far as
8 he knows, once the arbitrator has reached a decision, copies of
9 his decision can be made broadly available.

04:27

10 Is that fair, Mr. Coin?

11 THE WITNESS: Yes, sir, that's a fair statement.

12 MR. ESTEFAN: Okay.

13 BY MR. ESTEFAN:

04:27

14 Q. Mr. Coin, if the hotline or any of these other methods that
15 were -- you covered in this exhibit that you have there in
16 front of you, if they were used by an employee who feels like
17 they were harassed and the harasser finds out about it, that
18 would discourage employees from using that, wouldn't it?

04:28

19 A. If the person who had been harassing did something as a
20 form of retaliation, yes, that would certainly be a
21 discouraging --

04:28

22 Q. Well, wouldn't it also be even if the harasser found out
23 about it, that the person he or she harassed was complaining
24 about them? Even if he didn't retaliate, just fact that it's
25 supposed to be, you know, where you can report this without

04:28 1 concern about who finds out, if the person being complained
2 about finds out, that would have kind of a dampening effect on
3 people reporting. Isn't that fair?

04:28 4 A. Generally when someone reported that they were being
5 harassed -- I'll use myself as an example.

6 Q. Yes, sir.

7 A. When I was called to come and investigate, I was generally
8 the last person that harasser wanted to see when I walked in
9 their office and told them why I was there.

04:29 10 Q. When you walked in to see the harasser, you didn't tell the
11 harasser who had reported them?

12 A. Sometimes that was more than obvious.

13 Q. Right. But for them to find that out, it raises the
14 potential for them to then take some action against whoever had
04:29 15 reported them. You would agree with that?

16 A. It certainly raises the opportunity, but there was a policy
17 included against retaliation.

18 Q. Yes, sir.

19 A. Yes.

04:29 20 Q. That's all I have, Mr. Coin.

21 A. Thank you.

22 MR. ESTEFAN: Pass the witness, your Honor.

23 THE COURT: Thank you very much.

24 MS. VORPAHL: Your Honor, may I ask one more question?

04:29 25 I mean one.

RECROSS-EXAMINATION

BY MS. VORPAHL:

Q. Mr. Coin, sometimes in conducting investigations, it is necessary to provide information to people in the process of the investigation that might disclose the identity of the person having made the complaint. Isn't that right?

A. Sometimes, yes.

Q. All right.

THE COURT: Okay. Thank you.

BY MS. VORPAHL:

Q. You try to guard against that?

A. Whenever possible and practical, yes.

MS. VORPAHL: Thank you. That's all I have.

THE COURT: All right. You may step down. Thank you, Mr. Coin. You're free to go.

Do you have another witness today, or is that all?

MR. ESTEFAN: Your Honor, we have video witnesses, witnesses that are outside the country unavailable. We can play a video, if the Court would like. And I have some that are of different lengths.

THE COURT: Yeah.

MR. ESTEFAN: The only issue, then, I have to discuss is their --

THE COURT: Yeah. That's going to be a lengthy

04:30 1 discussion, I fear. Is there an agreed tape you can play?

2 MR. ESTEFAN: I believe we have -- yes, because they
3 were from the day before, your Honor, where we were going to
4 play them. So, I think we have a short one we can play.

04:31 5 THE COURT: Are you-all good for a little bit more?
6 Okay. Thank you.

7 MR. ESTEFAN: I'll confer with them, your Honor, real
8 briefly.

9 THE COURT: Yeah. I'm going to step off the bench for
04:31 10 just a minute.

11 *(Judge leaves bench briefly)*

12 THE COURT: All right.

13 MR. ESTEFAN: I've got 24 minutes, and theirs is 11 on
14 top.

04:34 15 THE COURT: But any of them you agree on is what I am
16 asking.

17 MS. CATES: I think we've agreed, and we've got your
18 rulings on everything from earlier.

19 THE COURT: Okay. Let's do the 24-minute one then.

04:34 20 MS. VORPAHL: It's 24 plus 11.

21 MR. ESTEFAN: Their offer is 11 on top of my 24,
22 Judge. So --

23 THE COURT: Do you want to stay for 35 minutes of
24 video, or are you ready to --

04:34 25 A JUROR: That's fine.

04:34 1 THE COURT: Ma'am, you look like you're less certain
2 than the other people.

3 A JUROR: I'm fine. I'll go with the flow.

4 THE COURT: Well, you're a trooper, you really are.

04:34 5 Let's go.

6 MR. ESTEFAN: Your Honor, at this time plaintiff would
7 call by videotape Anthony Adams.

8 THE COURT: Okay. These are going to be -- this is
9 going to be testimony by witnesses that were given a
04:35 10 deposition. A deposition is taken before trial, often in very
11 informal settings; but the testimony has all the force and all
12 the solemnity of testimony given to this witness chair. A
13 witness can go to jail for perjury in a deposition, just like
14 he or she can go to jail for perjury in that chair. Everybody
04:35 15 understand?

16 MR. HEDGES: Your Honor, the circumstances of these
17 are even little more different than others. This first witness
18 was actually in Baghdad, Iraq; and it was done by video
19 conference. So, none of the lawyers were actually even in the
04:35 20 room with them.

21 THE COURT: Okay. We're at the frontiers of video
22 science. We're having an intercontinental hookup to this
23 deposition especially for you. Okay.

24 MR. ESTEFAN: That's true.

04:36 25 We're having technical problems, Judge. I'm

04:36 1 sorry about that.

2 THE COURT: So, shall we --

3 MS. MORRIS: It's going to take a few minutes.

04:36 4 MR. ESTEFAN: He said a couple of three minutes to get
5 it fixed. He's going to try it. I hate to keep the jury, your
6 Honor.

7 THE COURT: We better knock it off. Plus I don't want
8 you-all to get in any worse hassles in rush hour than
9 ordinarily. I may be bad today. So, 9:00 o'clock tomorrow.

04:37 10 Would all please rise for the jury.

11 *(Jury not present)*

12 THE COURT: Okay. Please be seated.

13 You may have some things for me. I wanted to
14 talk -- in advance of Mr. Bortz' appearance tomorrow, I wanted
04:37 15 to talk about the criminal record. I remain of the view that
16 his mugshot from the Internet cannot come in. I think in 403
17 that the prejudicial potential greatly outweighs the probative
18 evidence.

19 On the issue of -- on the issue of impeachment by
04:38 20 evidence of conviction of a crime -- this is under Rule 609,
21 609(1), that allows for introduction of a criminal conviction
22 if the crime was punishable by death or imprisonment in excess
23 of one year under the law under which the witness was
24 convicted. And my understanding of the laws under which
04:38 25 Mr. Bortz was convicted was the maximum punishment was a year.

04:38 1 So, by the definition in 609(1), it doesn't come in. That's my
2 understanding, but I'll listen to contrary argument.

3 MR. McKINNEY: Oh, I think actually the maximum
4 sentence was 30 days.

04:38 5 THE COURT: No, no, no.

6 MR. ESTEFAN: Punishable.

7 THE COURT: Punishable, the maximum possible sentence.

8 MS. CULLEN: There were two instances. There was the
9 deferred adjudication, which I believe was the one in Florida
04:38 10 where the sentence could have been a year; but he was not
11 actually convicted. And the other was in --

12 THE COURT: South Carolina.

13 MS. CULLEN: -- South Carolina where the maximum
14 sentence was 30 days. Now, it's possible that I have got my --

04:39 15 MR. McKINNEY: No. You have it right.

16 MS. CULLEN: But I believe that's correct.

17 MR. McKINNEY: There was no conviction of a crime
18 involving even one year of punishment. It was deferred
19 adjudication vacated.

04:39 20 THE COURT: Are you making the distinction I'm trying
21 to make between "punishable" and "punished"?

22 MR. McKINNEY: I am, Judge. But before you get to the
23 issue of whether -- what the punishment is, there has to be a
24 conviction. Deferred adjudication is not a conviction as a
04:39 25 matter of law. The only conviction in Mr. Bortz' record is a

04:39 1 simple assault conviction in South Carolina, for which the
2 maximum punishment is 30 days.

3 THE COURT: Okay. That's my ruling on that.

4 Now, on the evidence of whether -- on the issue
04:39 5 of whether evidence that is -- his name has already been
6 sullied on the Internet, that seems to me almost another trial
7 in itself. I don't know what the circumstances were of his
8 being pilloried on the Internet and I'm not even sure -- I
9 mean, if the portrayal of him on the Internet is incorrect,
04:40 10 should we let that fact mitigate his damages? That seems wrong
11 to me, that incorrect information somehow makes him already
12 damaged in his reputation. That doesn't seem fair. I don't
13 think we can accommodate that.

14 If -- if the information on the Internet is
04:40 15 correct, then we have a different problem; but that brings up
16 the issue of whether Ms. Jones was in any way complicit in
17 getting it on the Internet in the first place. So, those are
18 the issues I'm wrestling with.

19 MR. McKINNEY: Well, if I may address that, Judge,
04:40 20 state law on libel and slander is that the defaming tortfeasor
21 isn't just liable for his or her own publications but remains
22 liable for each and every subsequent re-publication of the
23 original libel or slander. So, it would be --

24 THE COURT: What's applicable law here? I mean,
04:41 25 slander --

04:41 1 MR. MCKINNEY: State law. It's a state law claim.

2 THE COURT: Which state?

3 MR. MCKINNEY: Texas. We brought it under -- the
4 venue provisions under Texas state law permit a plaintiff to
04:41 5 bring a defamation suit pretty much wherever the plaintiff
6 wants to bring it. Because of the fact that this suit is filed
7 in Texas, the counterclaim is filed in Texas; and we're
8 proceeding under Texas law.

9 THE COURT: Well, we're definitely in Texas. Has he
04:41 10 lived in Texas before?

11 MR. MCKINNEY: He's been here through the KBR -- he's
12 not a resident of the state, by any means.

13 THE COURT: Well, does plaintiff agree that Texas law
14 controls?

04:42 15 MR. ESTEFAN: I mean, it's where the counterclaim was
16 brought, Judge, as part of this claim. So, I don't know --

17 THE COURT: Normally that wouldn't matter. Where it's
18 brought is --

19 MR. ESTEFAN: What I mean is this claim was brought in
04:42 20 Texas and so, if this is -- if this is considered a compulsory
21 counterclaim or one connected to the original --

22 THE COURT: I don't think it is. Now, the issue --
23 normally, Texas law follows the second restatement and it's the
24 law that has -- the state that has the most significant
04:42 25 context.

04:42 1 MR. MCKINNEY: It's -- Ms. Jones has done -- is a
2 resident of the State of Texas and has been in the State of
3 Texas, where she has done the vast majority of her defaming.

04:42 4 THE COURT: Well, you-all agree, then? You can
5 certainly waive any other choice of law if you want to. Do
6 you-all both want me to apply Texas law?

7 MR. MCKINNEY: Well, we're under Texas law.

8 *(Sotto voce discussion between plaintiff's counsel)*

04:42 9 MR. ESTEFAN: Yeah, there was a big period of time
10 where Ms. Jones was in California, Judge.

11 THE COURT: I know. There are a lot of other laws
12 that I think could apply. But if you-all are waiving whatever
13 other law could apply and agree to Texas law, I don't think I
14 have a problem with that.

04:43 15 *(Sotto voce discussion between plaintiff's counsel)*

16 MR. ESTEFAN: Gosh, I sure don't want to waive a more
17 favorable interpretation of the law.

18 THE COURT: You-all spend some time this evening
19 working on that. Okay?

04:43 20 MR. MCKINNEY: Aren't we entitled to a little notice
21 if they're going to make a choice of law?

04:43 22 THE COURT: Well, I think it's part of every lawyer's
23 job to figure out what law applies to a claim. I think that's
24 been an issue from the get-go, hasn't it? I mean, we were
25 always aware of it. We were always aware it was an issue we

04:43 1 had to decide at some point.

2 MR. MCKINNEY: I believe it's an *Erie* informed
3 decision and the fundamental rule in Texas law is that the
4 presumption of the Court -- in the absence of, A, notice and,
04:43 5 B, proof of the law in the other state, the presumption is that
6 the law of any other state is the same as the law in the State
7 of Texas.

8 But, in any event, to get back to the Court's
9 point about statements on the Internet, if I were to offer
04:44 10 those statements as proof of re-publication, that might make
11 them relevant. But that is not why the plaintiffs are offering
12 those statements. The plaintiffs are offering those statements
13 for the truth of the matter asserted in hopes of buttressing
14 their claims against Charles Bortz and diminishing standing.

04:44 15 THE COURT: That's the question. I'm not sure they're
16 offering it for the truth of the matter asserted. They may be
17 offering it for the fact that it was on the Internet. And
18 that's what makes me so uneasy. A false statement on the
19 Internet should not, in my mind, count to diminish the damages
04:44 20 of a defamation plaintiff.

21 MR. ESTEFAN: Judge, there's a couple of things that
22 are going on here.

23 THE COURT: Why don't you pull the microphone closer?

24 MR. ESTEFAN: There's a couple of things that are
04:44 25 going on here that I -- I think that I need to set the record

04:44 1 straight on this. Ms. Jones had nothing to do with setting up
2 the website Floridamugshots.com, or whatever that was. That
3 was set up independently of her. Someone other than Ms. Jones
4 actually found Charles Bortz' mugshot on the Internet, without
04:45 5 her prompting.

6 THE COURT: Okay. The mugshot doesn't come in.

7 MR. ESTEFAN: I get it. But the record was there with
8 the mugshot. And so, this stuff was publicly available, as
9 publicly available as anything else that they are claiming
04:45 10 Mr. Bortz was damaged by, on the Internet. They're saying
11 Ms. Jones defamed him all over the Internet and everywhere
12 else. Well, this is on the Internet, too, Judge.

13 MR. KELLY: Before.

14 MR. ESTEFAN: And it was actually -- his arrest was
04:45 15 before Ms. Jones made her first statement, filed this lawsuit,
16 anything else. His '06 arrest was before any of this lawsuit
17 or any of her statements ever went public, ever. So, our
18 position is we should -- we cannot defend her properly if we
19 don't have a right to go into his reputation. Whether it's
04:46 20 Floridamugshots.org or anywhere else, someone else found it.

21 THE COURT: Well, is the information accurate?

22 MR. ESTEFAN: Yes, it's accurate. It says he's
23 arrested for aggravated -- for battery.

24 MS. MORRIS: He's admitted it in his deposition. And
04:46 25 if I could just add, your Honor, Mr. Bortz alleges that he's

04:46 1 having trouble getting employment because of Ms. Jones'
2 statements. I made one phone call and did a search myself on
3 an Internet site and was able to confirm that he was convicted
4 of simple assault, the domestic violence related charge, in
04:46 5 South Carolina. So --

6 THE COURT: Your point is it's on the Internet anyway?

7 MS. MORRIS: It's on the Internet. You can call
8 Lexington County and just get a copy of the conviction and all
9 the facts that support the arrest. And I believe the original
04:46 10 charge is on here. And so, if any employer wanted to check his
11 background, they could do it, on the Internet and with a phone
12 call.

13 MR. MCKINNEY: Okay. There's enough -- any conviction
14 is public record. That doesn't -- there is no -- I can't
04:47 15 believe -- I'm having a hard time with the fact that we're even
16 having this discussion.

17 MR. ESTEFAN: Me, too.

18 MR. MCKINNEY: The rules prohibit offer of a
19 conviction into evidence because they're unfairly prejudicial,
04:47 20 unless there is a huge relevance issue and it complies with
21 Rule 608, none of which is the case here. It is a simple
22 assault conviction that --

23 THE COURT: We're past arguing about the conviction.
24 That by itself is not coming in. The question is whether -- in
04:47 25 an Internet defamation case, whether other information on the

04:47 1 Internet comes in even though it's not in compliance with
2 Rule 609. That's the trickier question.

3 MR. McKINNEY: But relevant on what point? To say
4 that because he was convicted of simple assault, therefore, his
04:47 5 damages of being accused of rape are less.

6 THE COURT: Yeah.

7 MR. McKINNEY: Okay. Shouldn't the proponent --
8 because the conviction is -- I mean, the Court has already said
9 the conviction doesn't come in.

04:48 10 THE COURT: Right.

11 MR. McKINNEY: So, if the conviction doesn't come in,
12 how come it comes in anyway? That's a contradiction in terms.

13 THE COURT: I'm looking for some help on that.

14 MR. McKINNEY: It's a contradiction in terms. It
04:48 15 either comes in or it doesn't come in. And it would seem to me
16 that the proponent -- that is, the people to my immediate
17 left -- the proponent of this inadmissible evidence ought to
18 have a relevant Fifth Circuit or Texas case that makes the
19 simple assault conviction admissible in this lawsuit. They
04:48 20 haven't offered you any legal authority, your Honor, none
21 whatsoever. We've briefed the living daylights out of it. It
22 clearly doesn't come in.

23 THE COURT: Hold on a second.

24 *(Sotto voce discussion at bench with court staff)*

04:48 25 THE COURT: My clerk points out that Rule 609 only

04:48 1 goes to impeachment on the issue of truthfulness. So, it
2 doesn't really speak to the defamation question.

3 MR. ESTEFAN: Exactly. That's not -- we're not here
4 to impeach him with it. As I said from the first hearing we
04:49 5 had on this, Judge, if it was about impeachment, we would
6 agree. But that's not why it's being offered. It's not a 609
7 analysis.

8 MR. MCKINNEY: But they don't come in at all unless
9 you're going to impeach. That's the whole purpose of Rule 609.
04:49 10 It's not like convictions come in any time you want to. But if
11 they -- I mean, it would be -- it's counterintuitive.

12 THE COURT: No, no. Rule 609, the first words in that
13 section are, "General rule - for the purpose of attacking the
14 character for truthfulness of a witness." That's not the issue
04:49 15 here. We're not talking about truthfulness. We're talking
16 about reputation.

17 MR. ESTEFAN: And mitigation of damages. And how else
18 can a plaintiff mitigate -- I mean, a defendant in a defamation
19 case mitigate their damages? Because, Judge, as you have
04:49 20 pointed out, the other side of this argument is going to be --
21 Mr. Bortz is going to take the stand and be portrayed as a
22 choir boy, a firefighter, a hero. And I can't -- I can't
23 constitutionally defend our client if that's going to be his
24 position and I'm not allowed to introduce mitigating evidence.

04:50 25 And that's why 405 of the Federal Rules of

04:50 1 Evidence is there, 405(b) specifically. And *Schafer versus*
2 *Time*, an Eleventh Circuit case, deals squarely with the
3 introduction of mitigating evidence. We've given that case to
4 the Court.

04:50 5 MS. CULLEN: Your Honor, if I might?

6 THE COURT: Yeah.

7 MS. CULLEN: When --

8 THE COURT: Get near the mic if you could, please.

9 MS. CULLEN: When Mr. Estefan filed his -- well,
04:50 10 actually, I've forgotten who filed the first motion and who's
11 had a response or reply.

12 But when they filed and briefed this, they were
13 citing to a Texas statute that allows evidence of convictions
14 and bad acts to come in, in a defamation case, on the damages
04:51 15 issue. And so, we responded by saying, "Yes, but only if
16 they've been specifically pled," which led to the Court saying,
17 "Well, pleading is usually a procedural issue and wouldn't
18 apply in federal court necessarily."

19 We weren't the ones who raised that statute.
04:51 20 They were. And if, in fact, you want to look at Texas law
21 about when do bad acts come in on the damages issue against a
22 defamation plaintiff, in Texas it comes in, but only if it's
23 been specially pled.

24 THE COURT: Well, that's -- I think the law is
04:51 25 against -- is against that point, though. I think that at

04:51 1 least this one case out of the Western District of Texas shows
2 that it is a procedural matter and under Erie, therefore, it
3 doesn't apply here. That's the way I understand the law.

04:51 4 MS. CULLEN: Your Honor, but it wasn't on point. The
5 point it was making -- it was a 12(b)(6) motion where the
6 plaintiff, in a defamation case, did not plead with the same
7 specificity as is required in Texas and it was a motion to
8 dismiss for failure to state a claim.

04:52 9 THE COURT: Well, it was a common law rather than a
10 statutory fact. I understand that.

11 MR. ESTEFAN: And there is no federal pleading
12 requirement for slander, your Honor, specificity or anything
13 like that. So as that case points out, the state law doesn't
14 apply on this procedural issue about how to specially plead it
04:52 15 or specifically plead it.

16 MR. MCKINNEY: Excuse me. I think that we need to
17 revisit the -- I would like to revisit, Judge, the Court's
18 apparent position that the pleading requirement under Texas law
19 is procedural and not substantive. If you will recall at the
04:52 20 beginning of the trial, we had an evidentiary issue and it may
21 have been -- oh, I was trying to find out what the rationale
22 was for the offer of this conviction; and I didn't learn the
23 rationale until we arrived at the courtroom.

04:53 24 The essence of the Texas statute that would allow
25 a conviction is you have to plead it in order to have the right

04:53 1 to offer the conviction so that the other side has fair notice
2 of what's coming and can deal with it. That's why the
3 substantive right to offer the evidence is keyed to the
4 procedural obligation to disclose it.

04:53 5 And the rule that the Court would apply in this
6 case is that in federal court, the defendant retains the
7 substantive right to use the information allowed by statute but
8 loses the procedural protection of the fair notice requirement
9 built into the statute. So, it's a knife that only cuts one
04:54 10 way and the Texas legislature --

11 THE COURT: That's the problem with the Erie law, and
12 that can happen sometimes.

13 MR. MCKINNEY: Well, the Court is not precluded by
14 Erie from following the entirety of the Texas statute. If the
04:54 15 Texas statute recognizes a fundamental fairness requirement
16 that a pleading disclose the intent to use a statute for that
17 purpose -- or sorry, the conviction for that purpose, why is
18 this Court precluded from following that Texas statutory
19 requirement? It is a fairness requirement. There's no
04:54 20 prohibition from this Court following the same state law
21 requirement that a state court would have to follow.

22 THE COURT: Well, it is if it's a procedural issue.
23 And I'm not going to be able to say anything new about
24 procedure versus substance. That's been a problem every since
04:54 25 Erie was decided.

04:54 1 MR. MCKINNEY: Let's put it another way. You have
2 total discretion to exclude this. It's incredibly prejudicial.
3 It's not probative at all on -- or barely probative, if at all,
4 on the issue of reputation.

04:55 5 THE COURT: Well, the whole problem with -- not the
6 whole problem, but a big problem with defamation is that we're
7 talking about an injury that is so hard to get one's arms
8 around. It is an issue -- damage to reputation, damage to the
9 concept of personhood is just so much more difficult than
04:55 10 damage arising from a broken leg or a sexual assault. And it's
11 not surprising that there's all sorts of seemingly artificial
12 rules that help cabin the application of defamation remedies,
13 because the law has always been justly concerned that
14 defamation is not real harm. And, therefore, to get over the
04:55 15 fact that it's not real harm, it's only as to somebody's notion
16 of who they are or what their neighbors think of them, we have
17 to proceed with caution. And I just -- it seems to me very
18 questionable for Bortz to be able to say, "This was on the
19 Internet, therefor I'm hurt." This was on the Internet, but
04:56 20 we're not going to allow it in.

21 MR. MCKINNEY: I haven't offered a single thing from
22 the Internet, and I do not plan to. The Internet has not been
23 mentioned.

24 THE COURT: Nothing Ms. Jones says on the Internet is
04:56 25 coming in?

04:56 1 MR. MCKINNEY: No, nothing. I've already put my
2 evidence in. The plaintiffs put it in. It's the news
3 broadcast.

4 MR. ESTEFAN: Yes. And more people get their
04:56 5 information now from the Internet than from news. So, we don't
6 have news clippings that say: Bortz got arrested.

7 Of course, not. If we have to refute TV evidence
8 with TV evidence, that's not -- we can't be hamstrung.

9 MR. KELLY: Not only that, every single one of those
04:56 10 news clippings is on the Internet.

11 MR. ESTEFAN: That's true, they are on the Internet.
12 News links go to the Internet, and everybody goes on there and
13 clicks on it and watches the news.

14 MR. MCKINNEY: It's a straw man. I am not putting any
04:56 15 Internet evidence in. We're not making an Internet-based
16 claim. We have put our evidence in without objection of the
17 news broadcasts regarding Charles Bortz. We haven't brought
18 any newspaper articles. We've only brought the media. It's --

19 THE COURT: But that's an equally strange argument,
04:57 20 though. You're saying that we'll listen to his damages on the
21 issue of news broadcasts, but we won't even consider the fact
22 that his reputation was being damaged on the Internet.
23 That's --

24 MS. CULLEN: Your Honor, if I might make one last
04:57 25 argument. In our society, short of being a child molester,

04:57 1 there is no more shameful label than rapist. He pushed his
2 girlfriend. He shouldn't have done it. He's not going to take
3 the stand and say he's an angel. Pushing his girlfriend as
4 compared to being branded for the world as a rapist are hardly
04:58 5 in the same league.

6 THE COURT: I agree.

7 MS. CULLEN: And with all due respect to these
8 gentlemen for whom I've had a good deal of respect, their own
9 briefing is very clear in that mitigation of damages is not
04:58 10 really the point. It's just the best argument. What they
11 really want to do is -- and you won't let them use an expert --
12 thank you for that. But what they really want to do is say a
13 man who would push his girlfriend would rape Jamie Leigh Jones.
14 And that's not a fair argument.

04:58 15 THE COURT: No. But when you are trying to mitigate
16 damages, it's often the case that the mitigation is not
17 anywhere comparable to the allegation that provides the basis
18 for the defamation suit. I don't think they're saying that
19 this pushing his girlfriend offsets the accusation of rape. I
04:58 20 think what they're saying is it is a variable in the equation
21 as to what damages ought to be.

22 If it were a Catholic priest, if it were Maria
23 Teresa and she was claiming absolute sainthood, one allegation
24 of misconduct would not wipe out her claim; but it might reduce
04:59 25 the damages somewhat. And I think they're entitled to try to

04:59 1 do that. It clearly will be brought out; and the jury knows
2 already, without anybody bringing out further, that the claim
3 of rape is vigorously contested. So, I don't think they can
4 say we can assume Bortz is a rapist, therefore --

04:59 5 MR. McKINNEY: And what is my remedy when they do say
6 that? A curative instruction, that's not going to help much.

7 THE COURT: The fact that you have a jury in the box.
8 The jury is, by this time, well aware of the fact that the rape
9 charge is controverted from stern to aft.

04:59 10 MR. McKINNEY: That's not my point, Judge. My point
11 is if you let this in on the limited issue of defamation
12 damages and plaintiffs' counsel begins arguing, as I am quite
13 content that they will do, if he will push his girlfriend, he's
14 already a convicted assaulter, he's a criminal, he's a bad guy,
05:00 15 you know he did it because he's got this conviction.

16 THE COURT: I'm not going to let them argue that.
17 Their argument on this assault will be limited to the
18 defamation claim. It has to be.

19 MR. ESTEFAN: I agree, Judge. Or Mr. Bortz has an
05:00 20 alternative. He can get on the stand and say: I did, I pushed
21 my girlfriend not once, twice, two different states, four years
22 apart.

23 MR. McKINNEY: We're not going into those. There's
24 only one conviction. That's the only thing that's going to be
05:00 25 talked about.

05:00 1 MR. ESTEFAN: I think that's the Court's ruling,
2 Mr. McKinney.

3 MR. KELLY: It's not about the conviction. It's about
4 the fact that he's been arrested, hauled off in handcuffs.
05:00 5 It's about neighbors have seen it. His reputation is tarnished
6 by his own hand, Mr. McKinney.

7 MR. MCKINNEY: Here's how the reputation was
8 tarnished, Ms. Sparky, one of your designated witnesses --

9 MR. ESTEFAN: You don't know that. You have no
05:01 10 evidence of that.

11 THE COURT: Gentlemen, we don't need this. We really
12 don't need this.

13 MS. MORRIS: Your Honor, if I could just add?

14 THE COURT: Yes.

05:01 15 MS. MORRIS: The plaintiffs argue that both the arrest
16 and the conviction would come in to mitigate the damages. It's
17 our understanding that the mugshot from the arrest is what the
18 Court has excluded at this point?

19 THE COURT: That's right.

05:01 20 MR. ESTEFAN: So, the mugshot doesn't come in.

21 MS. MORRIS: Just to be clear.

22 MR. KELLY: We'll leave it out.

23 THE COURT: I'm really befuddled by your argument that
24 somehow we look at Mr. Bortz' damages by considering all the
05:01 25 horrible things that have been said about him but don't account

05:01 1 for the fact that other things have been said about him that
2 are true and that do diminish his reputation. That just makes
3 no sense to me.

05:01 4 MR. MCKINNEY: We have filed briefing with references
5 to the Internet that if anybody follows the trail, they will
6 see that Charles Bortz' arrest in Florida was posted on an
7 obscure, virtually unknown website called Floridamugshots.com.
8 That photo was hunted up by Ms. Sparky, a designated witness on
9 plaintiffs' witness list, and prominently displayed on her blog
05:02 10 site with erroneous information underneath. That is where you
11 go to find Charles Bortz' mugshot.

12 THE COURT: This is a totally different argument then.

05:02 13 MR. MCKINNEY: So, what I am telling the Court is that
14 the Internet evidence that supposedly is offered to defend the
15 defamation claim was largely sponsored by -- and this is why
16 there is a notice requirement. I could have gone out and
17 nailed all this down with discovery and had something besides
18 just argument to meet this offer of proof if I had known why it
19 was being offered. But it wasn't pled. I had no notice
05:03 20 whatsoever.

21 The only thing I thought it could ever come in
22 for was a 609 impeachment. It's clearly not admissible on
23 that. So, what we have is an ally, a supporter of Ms. Jones,
24 who has hunted up some -- relatively insignificant -- and by
05:03 25 the way, if the Court wants to go to Ms. Kelly's --

05:03 1 Ms. Sparky's blog site and check it out, apparently Mr. Kelly
2 posts there quite a bit. And you can see all kinds of things
3 about Mr. Bortz that Ms. Sparky a/k/a Deborah --

4 MS. CULLEN: Crawford.

05:03 5 MR. MCKINNEY: -- Deborah Crawford has posted about
6 Charles Bortz, but she is plainly an ally of Jamie Leigh Jones.
7 She is doing whatever she can do to tear Jamie Leigh Jones
8 [sic] down. And now that constructed evidence, this
9 manufactured evidence on this woman's website is going to be
05:03 10 put into evidence in this case to prove, inferentially, the
11 allegations that Ms. Jones has made against my client.

12 And the point, your Honor, that Ms. Cullen made
13 just a moment ago, it's one thing to have a simple assault
14 conviction. It's another thing to be called a rapist on
05:04 15 "20/20" and elsewhere. That is the gravamen of our claim. And
16 using this very minor conviction in this courtroom is
17 fundamentally unfair to Charles Bortz.

18 THE COURT: I have great respect for you,
19 Mr. McKinney; but I don't think we've yet joined argument.
05:04 20 Nobody is saying that this assault is equal to a rape. Nobody
21 is saying that. But there's a difference between somebody
22 having a reputation that includes a background of assault and
23 arrest and somebody like Mother Teresa who has a background
24 that includes none of that.

05:04 25 It goes to damages. It doesn't go to liability.

05:04 1 It doesn't go to liability at all. It goes to damages. And
2 it's just not fair for a jury to be considering damages for
3 defamation when it doesn't have a full-bodied view of what the
4 reputation of the plaintiff is.

05:04 5 Now, we're now on a different issue, which is
6 Ms. Sparky, and we can return to that; but that's a totally
7 different argument from the one I was addressing or thought I
8 was addressing.

9 MR. ESTEFAN: Well, Judge, I don't think it's
05:05 10 different at all, your Honor.

11 MR. MCKINNEY: It's the same argument because that is
12 the source of the Internet defamation.

13 MR. KELLY: Ms. Sparky didn't set up
14 Floridamugshots.org. That was set up by somebody independent
05:05 15 of anybody, which means if Ms. Sparky can go find it, anyone
16 else can, too, Judge.

17 MS. MORRIS: I did a --

18 MR. MCKINNEY: No one else did.

19 THE COURT: Ms. Morris has the floor.

05:05 20 MS. MORRIS: Thank you. I did a little research about
21 the Floridamugshot.com and what it is is a website that's set
22 up, they go in and they get people's mugshots, they post them
23 and then they tell them if they want it off, they have to
24 contact this other website and pay a fee to get it off. So,
05:05 25 that's how his picture got on -- his mugshot got on there. She

05:05 1 found it. And it's a scam. So, he has --

2 THE COURT: "She" who?

3 MS. MORRIS: "She" meaning Ms. Sparky. And
4 Ms. Sparky --

05:05 5 THE COURT: What is Ms. Sparky's relationship to your
6 client?

7 MR. KELLY: Actually, your Honor, Ms. Sparky was an
8 electrician who, at one point in time -- I'm not sure when --
9 worked at KBR. She came back; she started a blog site with all
05:06 10 sorts of things about different things about KBR.

11 I actually wanted to address what felt like an
12 attack that I had posted on there. I think if you read my
13 posts, Mr. McKinney, they are in response to people saying they
14 know something, saying: Please contact my office. Here is my
05:06 15 phone number.

16 MR. MCKINNEY: Okay.

17 MR. KELLY: So, I don't appreciate the implication
18 that you made in this Court. I was trying to find witnesses
19 that I didn't know how to otherwise find when they said
05:06 20 something that I thought might benefit one of my cases.

21 MR. MCKINNEY: It is a website, it is a blog site for
22 Jamie Leigh Jones partisans. It is a manufactured, created
23 vehicle for making Charles Bortz look bad. Okay?

24 I can't make that blog site go away. But if this
05:06 25 Court essentially transfers that blog site created by Jamie

05:07 1 Leigh Jones' ally into this courtroom under the pretext of it's
2 out there, therefore it mitigates potential damage exposure --

3 THE COURT: But what Ms. Morris says is that it was
4 out there independently of Ms. Sparky and I can't --

05:07 5 MS. MORRIS: It was.

6 MR. KELLY: It was.

7 MR. MCKINNEY: It is Floridamugshots.com, which no one
8 is going to that website. The website that pops up -- if you
9 Google "Charles Bortz," it's going to go --

05:07 10 MS. VICKNAIR: It comes up. It's the site --

11 MS. CATES: Yes, and Ms. Sparky comes up.

12 THE COURT: We really don't need this. We're all
13 professionals. We don't need it.

14 Ms. Morris.

05:07 15 MS. MORRIS: If you Google "Charles Bortz," about five
16 down is a hit at Floridamugshots.com, which has absolutely
17 nothing to do with us.

18 THE COURT: If you Google "Charles Bortz" it comes up?

19 MS. MORRIS: Yes, Floridamugshots.com, click on it and
05:07 20 his mugshot comes on -- comes up off of --

21 THE COURT: If you Google "Charles Bortz"
22 independently, just use Google, type in "Charles Bortz" --

23 MS. VICKNAIR: Yes.

24 THE COURT: -- and you hit search, then the
05:07 25 Floridamugshot comes up?

05:07

1 MS. MORRIS: It does.

2 MR. KELLY: You will also get other references, your
3 Honor. We admit that, but that's not because we created it.
4 It's because people have reposted it. I've reposted it, but
5 the fact that it's been reposted doesn't mean that we created
6 it.

05:08

7 MR. McKINNEY: It's a travesty if that comes in.

8 THE COURT: Why?

05:08

9 MR. McKINNEY: It's just not fair. It's not fair.
10 It's going to be misconstrued by the jury. It's horribly
11 violative of Rule 403. It's just totally prejudicial.

05:08

12 THE COURT: I would wager that there are several
13 jurors in the jury box who have family members who have been
14 convicted of domestic assaults. I don't think it's -- I do
15 not -- I do not countenance it at all; but it is,
16 unfortunately, a terribly, terribly common phenomena.

17 MR. McKINNEY: It's not even domestic -- it was a
18 minor altercation in a bar.

05:08

19 THE COURT: So, it won't hurt him any. It won't hurt
20 him any. Mr. McKinney, we just can't have it that he comes in
21 with all this injury on the Internet, injury in the
22 newscasts --

05:09

23 MR. McKINNEY: Not being -- the newscasts are being
24 offered, not the Internet. It's not being offered. It's a
25 straw man for them to say: This is what's out there on the

05:09 1 Internet and this mitigates his Internet libel claim when we're
2 not even offering that.

3 THE COURT: And anyway, defamation, even in this
4 Internet world, is a local matter largely. Mr. Bortz and his
05:09 5 reputation is largely a question of what his neighbors and age
6 cohorts have heard about him. And I would wager that came
7 in -- that was transmitted at the time of the arrest and the
8 assault, not through the Internet.

9 I mean, people know about -- people who know the
05:09 10 alleged perpetrator know about domestic assault. It's just
11 very common. You know, I -- just about every criminal
12 defendant I sentence, when we get the rap sheet, it includes
13 something on assault, pushing in a bar, bar fight. It's
14 relatively common. I don't think the jurors are going to be
05:10 15 shocked by it. They're going to say this is what happens. And
16 I don't think that they're going to immediately make the leap
17 that if he did this, he must have raped Ms. Jones. I just
18 don't see that.

19 You know, all of us wish there were things about
05:10 20 us in the past that would never see the light of day; but we
21 don't have that choice, and especially if we're suing for
22 character -- if we're suing for character injury, we can't let
23 a plaintiff go forward and perceive that nothing bad about him
24 has ever been said, has ever been repeated, has ever been
05:10 25 published.

05:10 1 MR. MCKINNEY: We're not taking that position. We're
2 simply saying that this allegation, this allegation of rape is
3 false.

4 THE COURT: I understand that.

05:10 5 MR. MCKINNEY: That is our case.

6 THE COURT: I understand that.

7 MR. MCKINNEY: Okay, Judge.

8 THE COURT: And if the jury believes that, I suspect
9 they'll award quite a lot of money in damages and --

05:11 10 MR. MCKINNEY: We're not even looking for a lot of
11 money. I'll cap the damages at hundred thousand dollars.
12 We're not looking for a lot of money. If we get a finding of
13 defamation and some past damages, that is satisfactory. This
14 is not a money thing from our standpoint. This is a matter of
05:11 15 putting his reputation back on the issue of rape. I'm not here
16 looking to ring a bell, never have been.

17 THE COURT: I can't put his reputation back on the
18 issue of assault. He did it. I can't do anything about that.
19 It's part of who he is. I'm sorry.

05:11 20 MR. MCKINNEY: We're not suing over that. That is
21 not --

22 THE COURT: No, but it goes to damages. It's not the
23 same when Charles Bortz sues for damages to his injury and when
24 Mother Teresa sues for damages as to her reputation. They are
05:11 25 not the same kind of people. It would be false to claim that

05:11 1 they are. Mr. Bortz has infractions in his past that are part
2 of his reputation. I don't know why you're asking me to ignore
3 that.

4 MR. MCKINNEY: Because --

05:12 5 THE COURT: You know, if I sued for defamation, I
6 would like it very much if nobody knew that I was a delinquent
7 in high school; but it's part of what I've done. It's part of
8 what I've lived, and it doesn't go away. I mean --

9 MR. ESTEFAN: That's now on the record, Judge, so --
05:12 10 she's still going.

11 THE COURT: I know, but the statute of limitations has
12 run.

13 MR. ESTEFAN: All right. Just wanted to clarify.

14 MR. MCKINNEY: Well, I -- your Honor, I'm really at a
05:12 15 loss for words, Judge, because I'm pretty sure that it is --
16 it's defamatory per se to accuse someone of a crime like rape.
17 I don't know that it's defamatory at all to accuse someone of
18 simple assault --

19 THE COURT: I agree.

05:12 20 MR. MCKINNEY: -- absent specialized circumstances.

21 THE COURT: I agree. It won't hurt your client a bit.

22 MR. MCKINNEY: No. The follow-on is that if it's not
23 defamatory to accuse someone of simple assault, then whether or
24 not someone has committed or was arrested for simple assault is
05:13 25 irrelevant to their reputation in a defamation case.

05:13 1 THE COURT: Then the jury will ignore it altogether.

2 MR. McKINNEY: No. With all due respect, Judge, the
3 Court makes the rulings on relevance and simple assault, not
4 being a ground for defamation, is not, therefore, provable on
05:13 5 the subject of reputation --

6 THE COURT: So, you're asking me whether assault,
7 cheating on an SAT test, smoking pot, using heroin, getting a
8 speeding ticket, whether any of that is something that would be
9 of concern to the jury. I'm not that smart. I'm not that
05:14 10 smart.

11 MR. McKINNEY: It's a question of relevance, your
12 Honor. But look, I've lost the argument. I just am surprised
13 that I've lost the argument, and I did not anticipate losing
14 this argument. I thought this was --

05:14 15 THE COURT: Okay. What's your best case for the
16 proposition that in a defamation action, criminal proceedings
17 cannot be used in mitigation of damages?

18 MS. CULLEN: We haven't been able to find a case
19 directly on point because they're all under the Texas statute.

05:14 20 THE COURT: You know, and another thing to be said --
21 and I think this is important, maybe I should have led with
22 this -- I would never in my life sue for defamation because it
23 invites exactly this. It invites exactly this. And you knew
24 that when you filed it.

05:14 25 MR. McKINNEY: And the counterargument to that is that

05:14 1 when someone like Charles Bortz takes the witness stand in his
2 defense, the first question that I would ask if I was
3 representing Ms. Jones would be: Well, if you say that she's
4 not telling the truth, why haven't you stepped up to the plate
05:15 5 and sued her for defamation?

6 THE COURT: No. People understand that -- people
7 understand that being falsely accused of a crime does not mean
8 you have to file -- you have to file a defamation suit. No.
9 No. That's just not true.

05:15 10 MR. MCKINNEY: With all due respect, I disagree, your
11 Honor. That's exactly why I filed the counterclaim, because
12 this is not the kind of allegation that any person can let go
13 unanswered. You can't just go in and get a no finding that --
14 because the plaintiff's evidence didn't preponderate. You have
05:15 15 to get an affirmative finding in order to get your reputation
16 back that the -- what the plaintiff said was not true. That's
17 what you have to do in this kind of a case. You don't have any
18 choice.

19 THE COURT: I've been on the bench 12 years. I've
05:15 20 heard people accused of all sorts of grotesque things. I've
21 never once had a counter defamation suit, never. And do you
22 think Barack Obama, to prove allegations about him are untrue,
23 needs to file a defamation action?

24 MR. MCKINNEY: First of all, Judge, he's a politician.
05:16 25 Politicians on both sides say the worst things in the world

05:16 1 about the other side. Everybody ignores it. He's a public
2 figure. That's entirely different. Not a comparable
3 situation.

4 THE COURT: Well, horrible things are said about me,
05:16 5 including on the Internet. Am I obligated to go file a
6 defamation action?

7 MR. McKINNEY: Has anyone -- may it please the Court,
8 has anyone accused your Honor of rape and has the Court
9 received a target letter and testified before a grand jury and
05:16 10 been the subject of multiple television interviews?

11 THE COURT: No, but --

12 MR. McKINNEY: I don't think so. The situation,
13 again, with all due respect, is not comparable.

14 THE COURT: I've been accused of corruption and
05:16 15 dementia and all sorts of things. I just do not accept that a
16 defamation action has to be filed, everything -- every time
17 someone says something untrue about me or about your client.
18 Now, having filed a defamation action, he's in a position very
19 analogous to Ms. Jones. It's open kimono. It really is open
05:17 20 kimono.

21 MR. McKINNEY: Then let's open the kimono all the way
22 and we'll put the grand jury in and we'll put the prior alleged
23 sexual assaults in and the jury can hear it all. But what
24 seems to me, with all due respect, Judge, the kimono is only
05:17 25 partially open.

05:17 1 THE COURT: I think Ms. Jones has paid an enormous
2 price for filing this lawsuit.

3 MR. KELLY: I agree, your Honor.

4 THE COURT: I just can't imagine.

05:17 5 MR. ESTEFAN: And, Judge, there's a specific statute
6 on why the prior -- we don't have to revisit that; but you know
7 about the rape shield law. There is no such thing about
8 mitigating damages in a defamation action. There's just not.
9 So, Mr. McKinney is not comparing apples to apples here.

05:17 10 MR. MCKINNEY: I realize I've lost on this point. I'm
11 just expressing my dismay, which I appreciate the Court
12 humoring me and permitting me to do so.

13 THE COURT: I respect you greatly, and I'm willing to
14 listen to your arguments. I just --

05:17 15 MR. MCKINNEY: At a very minimum, then, what the
16 Court -- we will need a very strict admonitory instruction to
17 the jury.

18 THE COURT: Okay. We need to take a short break
19 before my ruling becomes final. We'll be back.

05:22 20 *(Recess taken from 5:18 p.m. to 5:22 p.m.)*

21 THE COURT: Okay. My law clerk reminds me that we
22 probably haven't been specific enough in what comes in, what
23 doesn't. All of Ms. Sparky's Internet stuff doesn't come in.
24 Floridamugshot, I don't think, comes in.

05:23 25 What comes in is the arrest and conviction and

05:23 1 the fact that it has been on the Internet. That's all that
2 comes in. We're not going into postings by Ms. Sparky. We're
3 not going into Floridamugshot. That's it.

4 MR. MCKINNEY: Do I understand correctly -- and I'm
05:23 5 not -- the arrest and the conviction arising from the arrest?

6 THE COURT: And the fact that it has been
7 re-published.

8 MR. MCKINNEY: And the fact that it has been on the
9 Internet?

05:23 10 THE COURT: Yes.

11 MR. MCKINNEY: Then the way to do that is for the
12 Court to simply advise the jury that on the issue of Mr. Bortz'
13 Internet defamation damages, if any, you are instructed that
14 Mr. Bortz was arrested and convicted of simple assault in
05:24 15 South Carolina and you may consider this solely on the issue of
16 his reputation damages, if any, and no questions to Mr. Bortz
17 about --

18 THE COURT: No, no.

19 MR. MCKINNEY: -- about the underlying facts?

05:24 20 THE COURT: No.

21 MR. MCKINNEY: Well, Judge, the underlying facts
22 aren't on the Internet.

23 THE COURT: I'm not going to -- we didn't -- I didn't
24 put on any of Ms. Jones' favorable evidence by my reading to
05:24 25 the jury. The questions can be asked. If they're

05:24 1 inappropriate questions, I'll overrule them. But, no, we
2 don't --

3 MR. McKINNEY: But may I ask in limine then that no
4 questions be put to Mr. Bortz about the facts underlying the
05:24 5 arrest or the conviction? He's simply allowed to be asked:
6 Were you arrested? Were you convicted? Is this on the
7 Internet?

8 THE COURT: No, I don't think so.

9 MR. McKINNEY: Well, Judge, I thought that was your
05:25 10 ruling that that was all that was going to come in, the arrest,
11 the conviction that's on the Internet.

12 THE COURT: Well, and the facts that go with it. What
13 I meant, we're not putting on all this madness from the
14 Internet. But do you have a conviction? You ought to bring it
05:25 15 out, actually. You ought to pull the teeth on this.

16 MR. McKINNEY: I don't get to ask him questions first.
17 He's being called adversely. And secondly, the fact --

18 THE COURT: No, you're missing something here. We're
19 not letting them inquire about defamation in their direct
05:25 20 examination, no. That will be yours. You're the
21 counterclaimant. You go first on that claim.

22 MR. McKINNEY: Okay. I did miss that part. There
23 is -- the facts underlying the arrest are not on the Internet;
24 and, therefore, the facts underlying the arrest will not show
05:25 25 anything about his reputation --

05:25 1 THE COURT: But if you're right, then it's all just
2 shoving somebody in a bar, then that's something you would want
3 to bring out.

4 MR. McKINNEY: The concern is it was an altercation
05:26 5 between he and his girlfriend.

6 THE COURT: I understand that.

7 MR. McKINNEY: And -- understood, Judge.

8 THE COURT: Okay. But you put on your case about what
9 happened between Mr. Bortz and Ms. Jones. We'll allow
05:26 10 Mr. McKinney to take him on cross for that. Then Mr. -- I'll
11 make this clear to the jury. Then Mr. McKinney can call Bortz
12 as a plaintiffs' witness on the counterclaim. And then that
13 will have -- it will then be your witness, and it'll be your
14 cross-examination.

05:26 15 MR. ESTEFAN: Understood, your Honor.

16 MR. McKINNEY: And again, it's only the arrest
17 producing the conviction that comes in?

18 THE COURT: No, I didn't say that. No. Arrest
19 damages reputation, too. I mean, it just -- no. It's never
05:26 20 been the case that just it had to be an arrest or a conviction
21 to do damage to your reputation. Someone smoking weed, someone
22 cheating on a test, that would come in as something that
23 damages one's reputation. The arrest and conviction is about
24 Rule 609, which I've already ruled on.

05:27 25 Thank you-all very much.

05:27

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(Proceedings recessed for evening)

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COURT REPORTER'S CERTIFICATION

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled cause.

Date: June 22, 2011

/s/ Cheryll K. Barron

Cheryll K. Barron, CSR, CMR, FCRR
Official Court Reporter

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